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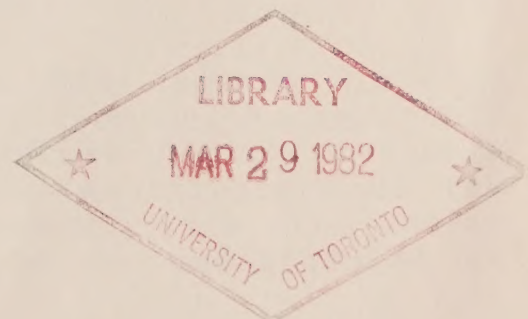
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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

SPEAKER'S PROCESSION
DIVISION BELLS
VISIT TO ONTARIO POLICE COLLEGE
REVIEW OF ABCs
REVIEW OF ESTIMATES PROCEDURES

THURSDAY, MARCH 18, 1982



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breagh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
Piché, R. L. (Cochrane North PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Also taking part:

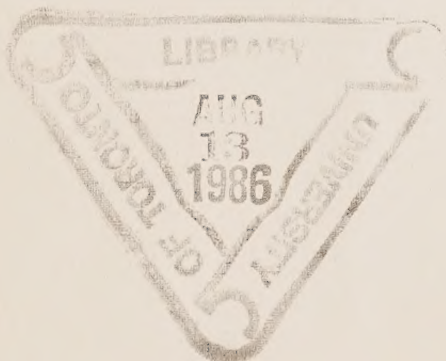
Robinson, A. M. (Scarborough-Ellesmere PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher

Lewis, R., Clerk of the House

Turner, Hon. J. M., Speaker



LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, March 18, 1982

The committee met at 10:12 a.m. in committee room 1.

Mr. Chairman: We have a quorum--more than a quorum. I call the meeting to order.

Before we start our agenda, Mr. Robinson, a very illustrious member of this committee up until today as you know, would like to say a word to committee members.

Mr. Robinson: Thank you, Mr. Chairman. I wanted to come by and say I am personally disappointed not to be up here with you today. Having been in this Legislature for only a year, I think I earned my stripes and learned the ropes in this committee more than in any other single place; and while we have not always agreed, I thank each and every one of you for the learning experiences you afforded me during the course of a year.

I think we in this committee, from my observation of other places, have produced more that is meaningful and long term, have done things in a more co-operative and positive way, putting partisanship aside. Yet we have enjoyed the camaraderie of the combat, if you will, at times. To Mike, Brian, Herb, Hugh and Remo--would you stand up please? Oh, I'm sorry; he is not there--and to all the people on my side, David as well, I wanted to say I have gained genuine respect and affection for each of you individually. To the chairman, who has been quite an education, a very pleasant man to work under, I say thank you as well, sir.

I would like to conclude by offering two other comments. The first is to Smirle, who, as we all know, does a fine job of keeping the organization of the committee going, and I think that is very important for anything that is going to proceed in a very positive way. Finally, I conclude by saying to John Eichmanis, for whom I have the greatest respect, that I hope this committee has the benefit of his very excellent work for many years to come.

Mr. Chairman: Thanks very much. We are going to miss you, Al.

SPEAKER'S PROCESSION

Mr. Chairman: The first item on the agenda is the Speaker's procession. You see a letter there from Mr. Turner. This was a result, I believe, of a rather informal discussion among some of us in the committee after visiting Westminster and the Houses of Parliament there. Being impressed with the daily Speaker's procession, we thought it should be reinstituted at Queen's Park.

Mr. Speaker, would you like to step up, and Mr. Lewis as well? I am not really sure what you are driving at in the last paragraph of your letter.

Mr. Speaker: The suggestion was made that I was seen as being somewhat less than impartial by using the office on the government side of the chamber, to quote your letter, and I thought surely that must have been a rather facetious observation.

Mr. Chairman: It is too bad I do not have a copy of my letter.

Mr. Breaugh: I am not going to touch it at all. I am just going to leave it right there.

Mr. Speaker: Unless this committee wants to make a recommendation for a new office someplace else that is more appropriate.

Mr. Edighoffer: Maybe I should make a clarification. I remember in the last meeting there was a little discussion on this. I do not know how the chairman worded his letter, but I was the one who stated that when the previous Speaker decided on the procession one of his comments was that he thought it would help to make the Speaker's office look a little more impartial than always coming out from the side of the government. That is all that was said.

Clerk of the House: Could I speak to that? I just thought I should point out that the office next to the chamber was built as the Speaker's office when this building was built. It has been the Speaker's office ever since, and up until a very few years ago it was the Speaker's only office. In fact, the Speaker does not come from the government section, if you can put it that way; he comes from the Speaker's office, which is back in the corner. It has nothing to do with the lobby outside the office. He comes from the Speaker's office in the corner--"behind the chair" is the expression.

I am not downgrading the parade at all; please don't misunderstand that. Whatever the Speaker and the committee decide is fine with me, but I simply want to point out that our tradition always was that the Speaker came from behind the chair.

The parade in England is a fairly recent innovation there. The Speaker there came from behind the chair for centuries until they moved his office, and the parade was inaugurated to get him from one place to another. That was really the only reason for it.

Mr. Breaugh: I am a proponent of having a Speaker's procession. I do not suggest it is an earth-shattering event, but I think for people who are visiting the Legislature it is an opportunity to see the table officers and the Speaker proceed in to begin the day. For a number of reasons of education and information, I think it is worthwhile from that point of view.

You can read a great deal of symbolism into it as to whether it means that the Speaker is really impartial because he enters the front door of the chamber and all of that. I do not get upset when he comes in from behind the chair, although I must say that from the opposition side it is very difficult to determine whether he comes in from behind the chair or from the government side. It

certainly does look as if you have to go through the government lobby to get to the Speaker's office.

But all that aside, I think it is a useful exercise from a number of educational points of view, and something that is worthwhile for beginning the day. I do not think it is a big deal, which is probably the main reason why I think it ought to be reinstated.

10:20 a.m.

It is something that is a worthwhile thing with which to begin the process of the day. It has a little merit from the members' points of view, perhaps a little more merit from the point of view of visitors and I think it is worthwhile to have each day's session begin with a small procession like that.

If we were talking about hiring bands and burning up great expense--but the fact is, the Speaker has to get into the chamber one way or another and it seems to me fairly logical that he would proceed up the main staircase and into the chamber by the main door.

Mr. Chairman: Do you have a comment?

Mr. Rotenberg: I am not that enthused about the Speaker's parade. As Mr. Breaugh says, I do not think it makes much never mind one way or another. Certainly, we had that Speaker's parade briefly in the last Parliament. I thought it was a bit much. The thing that bothered me a little was the whole second-floor corridor was simply blocked off. It looked as if the Queen was coming and there was a bunch of terrorists waiting to shoot her down because of the way the security people kept people back and the hall outside the chamber no longer belonged to the people. Suddenly, it looked almost like a military parade coming up there.

Mr. Chairman: Are you talking about Westminster or Queen's Park?

Mr. Rotenberg: I am talking about right here.

Mr. Chairman: You mean lately?

Mr. Rotenberg: Everything stopped and people were sort of pushed aside because Mr. Speaker was coming. I felt it was a bit much, the way security was up there.

Mr. Chairman: It was only a few minutes.

Mr. Rotenberg: If the Speaker wants to have a parade, but I just think it is a waste of time. I do not think it adds anything. We lived for a hundred and some years without a Speaker's parade. We had one for a year and I do not think it added anything to the House. Last session we had no Speaker's parade and I do not think it detracted by not having one.

Mr. Epp: Mr. Chairman, I am in support of having the

Speaker's procession. I think it added a certain amount of dignity and charm to the opening of each day. I think people walk down to see the Speaker's procession. When new people come to the Legislature, I understand they appreciate it very much. So I am supportive of that idea for the same reasons that other members have indicated and I hope we could reinstitute that as soon as possible.

Mr. Watson: Mr. Chairman, I am supportive of the Speaker's parade. I do not think it is a big deal but it adds a little to the start of proceedings, and the Speaker's main office is downstairs anyway. I do not buy this blocking off, that people have to block off that section--

Mr. Chairman: Good heavens; I just did not see all that commotion today.

Mr. Watson: I do not see all that much commotion. It is nothing to us who are here every day; but when people are here visiting and so forth and they see the Speaker's parade. Besides, it was always a great alarm. You could go in the east door and see the Speaker going up and if you ran the other stairs fast enough, you could get in there.

Mr. Epp: I need the exercise to take the weight off.

Mr. Watson: I was wondering who was going to get the privilege of saying, "Hats off, strangers."

Mr. Chairman: That is what I was going to say. Can you see the Speaker standing there on the second floor saying, "Hats off, strangers. Order, order"?

The Clerk of the House: --a regular posting of security people all the way along and up the stairs who each yelled at the top of their lungs, "Mr. Speaker."

Mr. Speaker: I guess that is really what I had objected to. It was not the procession itself, but it was the perception and the actual way in which the public was handled. I think that can be overcome and I think we should speak to the security people on that.

Mr. Chairman: I would think one person to fulfil that function would be sufficient while we move with the parade. Does anybody else have any comment? Hugh, I assume you are in favour of it? Would you like to say something, Mr. Robinson?

Mr. Robinson: Very briefly, Mr. Chairman--

Mr. Chairman: I guess you can sit down. You probably will not vote on this but you can sit and be on the record.

Mr. Robinson: If we remember, I think we were strangers in the Parliament of Westminster and I think everybody here was keen to see the parade for whatever reason, or perhaps for a variety of reasons. It was an event. Now whether or not we would go running to see it every day I do not know but we, as people who

were in Westminster for the first time from another jurisdiction, if you will, were all keen to see what the Speaker's parade was because we had a particular interest. I do not think it is any different here at the Legislature.

I think people who are coming here, whether they be school kids or visitors from out of town or some other part of the province, have any less interest or any less curiosity about the officers and the dignity of things. If we robe the Speaker and we robe the Clerk of the House, the Sergeant at Arms and the table officers, we should equally make the custom of them being robed as visible and as significant as possible, get the most mileage out of it we can.

I say that, of course, in the light of the fact that political parties, by the nature of their operation in our Legislature and in the House of Commons in Ottawa, do not do anything to heighten the dignity of the Legislature or the House of Commons itself. I think the responsibility for that dignity then falls to the people such as the Speaker, the Clerk of the House, the Sergeant at Arms and those other officials of the House to maintain a sense of dignity, to maintain a sense of stability, of common sensibility about the whole operation of the Legislature.

I think the parade, which is a minor kind of thing, can go a very long way actually to add to the custom and the heritage in the long term of the House itself. It brings the Speaker through the Legislature. It gives people an opportunity to see that which is Ontario, as the Speaker exemplifies Ontario by his neutrality and his belief in all the things that will accrue here in this building. Why not let people see him?

Why not let him enhance the dignity, not by seemingly coming in from somewhere. I do not want to be partisan and say which side it is on. I do not care if he loops around the chair so we see him take his last steps from the opposition side. It makes really no difference. But I think it is always a pleasure for me to see the Lieutenant Governor's procession come in. I think on a daily basis, without going into a lot of aggravation and a lot of expense, it would enhance the whole appearance of this building and take it a little above the street-fight level we find ourselves in by 2:10 p.m. each day.

Mr. Breaugh: I think we have a consensus on that.

Mr. Chairman: I think we have a consensus. Mr. Piché, do you want to comment?

Mr. Piché: No. I don't.

Mr. Chairman: I think the consensus is, Mr. Speaker, that we would like to have a Speaker's procession each day that the House is in session. Whether or not it is exactly like Westminster or whether it is exactly like we used to have before, I think we would leave that up to you. Whatever you feel is the best arrangement for a procession of that kind, how many people you will need, how far the public has to stand back, whether they can leave their hats on or off, we will leave that up to you, whether you have to have the red carpet every day.

Mr. Speaker: There is red carpet now.

Mr. Rotenberg: Dancing girls throwing flower petals at your feet.

Mr. Chairman: I think the idea of the procession with the Sergeant at Arms, generally the same as your predecessor had it, would add a great deal to the House.

Mr. Speaker: It is interesting. We have just come back from a trip to most of the Legislatures and without exception they all have a parade of some form.

Mr. Robinson: Could I just make one final suggestion and ask if the Speaker has considered using the pages as part of the procession, not all of them, but putting them on a rotating basis, perhaps four to six of them a day as part of the procession? I think it gives them probably a bigger feeling and higher profile instead of running for water.

Mr. Speaker: Sure, that can be done.

Mr. Chairman: Have a cameraman there the first day.

Mr. Speaker: We will.

Mr. Chairman: An official cameraman.

Mr. Speaker: Then at the direction of the committee I would be very happy to start that. The reason I fired the letter back so quickly was that, if it was going to be implemented, I think the appropriate time would be immediately after the school break.

DIVISION BELLS

Mr. Chairman: All right, the next item is rather timely. I imagine there will be a 100 per cent consensus on this one, the dingling of the division bells. We have a copy of Mr. Speaker's letter. I was under the impression, from a speech the whip made in Burlington a couple of weekends ago, that we would not have the same problem Ottawa had because we are required to adjourn at 10:30 each day. But apparently he is not right.

10:30 a.m.

Mr. Speaker: So are they.

Clerk of the House: So are they.

Mr. Chairman: That is right. They are required to adjourn at 10, I guess.

Mr. Speaker: At 10 p.m.

Mr. Chairman: Yes. Our standing orders are silent on this, is that correct?

Mr. Rotenberg: We had an event like this last year where the bells started to ring about 3:50 p.m. and they rang until 10:30. The House was adjourned and we came back the next day for question period. That is a precedent which has been set, so what is the problem?

Mr. J. M. Johnson: That was the night they were preparing to have the opening of Ontario Northland.

Mr. Rotenberg: No. It was one of the opposition parties--

Mr. Speaker: I think the circumstances were somewhat different, and I would hate like heck to use that as a precedent.

Mr. Rotenberg: It was called on something in the afternoon and the bells rang till 10:30 and the House adjourned. Is that not correct?

An hon. member: That is correct.

Mr. Rotenberg: That was in accordance with the standing orders, I assume.

Mr. Speaker: It was interpreted that way.

Mr. Rotenberg: Then why is that not a precedent?

Clerk of the House: It is to some extent.

Mr. Speaker: Yes.

Mr. Rotenberg: Because the House does adjourn at 10:30 whether there is a motion or not, does it not? In our House there is no need for a motion to adjourn.

Mr. Speaker: As I understand it, when a vote is called at any particular time, time is frozen until that vote is disposed of. If you were following what was going on in Ottawa they kept referring to the Tuesday--that was when the motion was made.

Mr. Rotenberg: Is that not known as the long count?

Mr. Speaker: It was indeed the long count.

I guess the thing that bothered me was that there is not any specific reference to it in our standing orders, and obviously not in theirs. Some jurisdictions do have it. What bothered me more than anything was suddenly the media became experts in this area and launched a pretty unprovoked attack on the Speaker, suggesting she should do certain things. I think from my own view these were beyond her jurisdiction.

However, I just brought this to the committee's attention for some direction, or maybe to highlight the problem and suggest that changing the standing orders might be taken under consideration.

Mr. Chairman: I understand it is not covered here. I am

reading standing order 3(a). I realize the marginal note refers to night sittings. But it says, "Except as provided in clause (b)"--which refers to Friday--"in standing order 28, on any Monday, Tuesday, Wednesday or Thursday, if the business of the day is not concluded at 6 o'clock, the Speaker shall leave the chair until 8 o'clock and the House shall continue to sit until 10:30 o'clock p.m., when it shall adjourn without motion."

When it happened in Ottawa, there was a motion to adjourn, the bells rang for the vote and the whips did not come in. Is that it? Yes. The bells kept ringing. If they had the same standing order why would that House not adjourn at 10 p.m.?

Mr. Speaker: Because it was still 2 o'clock, or whatever time it was when the vote was taken.

Mr. Chairman: I see. That is why they sat for only a few minutes yesterday.

Mr. Speaker: Yes. They disposed of it as though it was still the Tuesday of two weeks before.

Mr. Chairman: So it really was not March 17; it was March 9.

Mr. Speaker: Probably the rest of us thought it was.

Mr. Breaugh: I think this is an interesting point. It certainly is debatable as to whether our standing orders and our precedents cover this or not. The one point I am in agreement upon is that the standing orders at least need some considerable interpretation before you go to that. The obvious answer, I guess, is to say that it cannot happen here because we say we are supposed to adjourn at 10:30. If the bells are still ringing the Speaker assumes the chair and says, "It is 10:30. This day is over," and we will come back tomorrow and do it again. But that requires a little movement and some judgement calls before it can happen.

It struck me that Madam Speaker Sauvé decided quite properly that the argument in Ottawa was really a political one and not strictly one of procedure. She said, "In that case, the House can resolve its own problems." The difficulty is that there was no mechanism for the House to resolve its problems. So the three House leaders, it is my understanding, did not even meet. They kind of had little press conferences here and there and the odd telephone call took place, and they met occasionally passing in the halls from one camera crew to the other. But there was no mechanism which said when an impasse has been reached somebody from the House has to sit down and resolve it.

That thing could have gone on forever. It seems to me that is particularly silly. From the public point of view it is really silly, but even from the members' point of view it is silly.

I would like to give a little bit of consideration in our standing orders to writing in some provisions for the Speaker to deal with that when it is not clear what is going on and when he

feels it really is not his job to stick his nose in. What does the Speaker do in that situation?

It struck me that Madam Speaker Sauvé was kind of caught in a position in which a Speaker should not be caught. I think one of the things we might do is give some consideration to giving the Speaker some latitude, not to make a judgement on his own but to call on, say, this committee or the three House leaders. I think we should consider having some mechanism like that, when an impasse has been reached, so that the Speaker has jurisdiction to refer the matter to a representative committee--this one or the House leaders.

The problem I have with referring it simply to the House leaders is that in that case there are three people, each representing a political party. If a matter goes to a vote, two of the parties must agree or there is no resolution. That would pose a bit of a problem. I am not sure the House would be happy to put it, say, through a procedural affairs committee, but at least the committee is representative of the constitution of the House; all three parties are here in relatively proportional numbers.

Maybe we might give some thought to drafting a standing order that in unusual circumstances like that would allow the Speaker the prerogative of referring the matter to a committee such as procedural affairs. The committee must then meet to resolve the problem.

There would be some technical problems if the House is not in session. If a committee of the House meets, how do we get a report back to the House if it is not sitting? We would have to draft something in there which allows the Speaker to refer it to a committee, then receive a report from the committee and act upon it. This would be rather unusual, but I am sure if we set our great parliamentary minds to it, and our crack research team, we will come up with something they will call "appropriate."

Mr. Chairman: You are suggesting we draft a standing order to deal with an extraordinary situation like this which would allow the Speaker to refer the matter for decision to this committee.

Mr. Breaugh: There is my problem. It strikes me that if Madam Speaker Sauvé had said, for example, "This is a procedural matter and I am going to make a ruling," I do not know how she does that.

Mr. Chairman: No. She is not--

Mr. Breaugh: The members are not there; there is nobody to give a ruling to.

Mr. Speaker: She has to decide very quickly when the motion is made--

Mr. Chairman: She does not know whether it is going to a vote or not.

Mr. Speaker: No. But she has to decide whether it is an abuse of the rules, first of all.

Mr. Chairman: Yes.

Mr. Speaker: Second, she has to keep in mind the rights of the minorities. Those two things have to be dealt with reasonably quickly. It would seem to me the simpler we keep the mechanism the better. What we had discussed earlier was similar to what they do at Westminster. They have a very definite time limit on the ringing of the bells, no matter what the cause.

Mr. Chairman: Yes.

Mr. Rotenberg: Mr. Chairman, I cannot agree with what Mr. Breaugh says. I think philosophically it is not the right way to go. If there is an impasse, as happened in Ottawa two weeks ago, no matter what committee the matter is referred to, if the government had a majority and as long as everybody is stubborn--and that is the only reason the thing lasted two weeks--the majority of that committee is going to back the government or is going to take the other position.

10:40 a.m.

If you refer it to the House leaders, again you are going to have it the wrong way around. If you are going to have it resolved by negotiation, as it was in Ottawa, when it was ready to be negotiated it would happen no matter what the Speaker did. Had Mme Sauvé had the power to call a committee together, the House leaders or whatever committee, the impasse would have been there anyway, in my opinion.

I think the Speaker has just put his finger on exactly the situation. In my opinion, the way to resolve this situation is not by leaving and just saying when you have a problem, "Let's sit down and discuss it." If you want to resolve the problem--and it has come up once in a parliament in this country in 115 years with 11 parliaments--you must put some form of time limit on the bells. We have time limits on some bells: when bills are stacked it is 10 minutes, and it is five minutes on certain things. We have unlimited bells. If you are going to stop the unlimited bells, and I would be very hesitant about having the very brief time limit of 10 or 15 minutes as they have in Westminster, either put a maximum time of, say, two hours or three hours on any bell, no matter what it is--

Mr. Chairman: There are three or four provinces that do have a maximum now.

Mr. Rotenberg: Yes. So there has to be time; remember the time that one of the party leaders was in Kingston, the bells rang for two hours until he got back. Sometimes our party leader is in Brampton and it takes half an hour or an hour for him to get here. You have to have a reasonable time limit. I would not object to a two or three hour time limit on all bells. Conversely, you can say that when the bells have rung until 10:30 then whatever

vote is being taken is wiped out and you start over the next day, which is what the precedent was.

You go one route or the other, I think. But with respect to what Mr. Breaugh is suggesting, if you want to solve a problem I think you have to put something in the rules that solves the problem and not say, "When we have a problem, let's negotiate." I know that Mr. Breaugh put it in good faith but, quite frankly, looking at the Ottawa situation, I do not think that this kind of thing would have done anything to solve the problem, because people would have come to the committee, sat there like stones and just refused to negotiate, and the committee would have got nowhere.

Mr. Chairman, I think we should either put a long time limit on every bell, for which, I'm sure, there are precedents in other Legislatures and we can find out what they are, or put something else in the standing orders as the precedent has been set that says that if a bell is still ringing at 10:30 it can ring for so much longer (inaudible) and then the motion is wiped out and you start over the next day. One of those two is the only way to solve the problem. The more I think about it the more I am inclined to have a long time limit on every bell.

Mr. Breaugh: The problem was not the ringing of the bells; the problem was that one of the parties and one of the whips refused to attend for a vote. The bells rang quite nicely for two weeks. The problem was that one of the parties said, "We do not care how long the bell rings, we do not care what your rules are; we will not vote."

Mr. Chairman: There must be some way that we can have a standing order, a rule in standing procedures, which says that, regardless, at 10:30 at night the place closes down. Then the bell can start the next day at two o'clock or something.

Mr. Rotenberg: No. We have the bells on stacked votes. It is a 10-minute bell. At the end of the 10 minutes the vote is taken. I do not know if the whips walk in or not at that stage. The vote is just taken.

Clerk of the House: No. They walk in.

Mr. Rotenberg: All right. But on Thursday afternoons, in the private members' hour the whips do not walk in. It is a five-minute bell. The whips do not walk in; the vote is taken.

Clerk of the House: That is not a division. That is--

Mr. Rotenberg: That is a division. On a private member's bill somebody calls up--

Interjection.

Mr. Rotenberg: All right. The point is this: If you say that at the end of a certain period of time the vote shall be taken, and that is the end of the time on the bell, in effect it

overrides the tradition; if one party does not walk in the vote is going to be taken anyway.

Mr. Breaugh: No. It does not.

Mr. Rotenberg: It is going to have to if that is the end of the time for the bell. If we take the stand that no matter what the time limit, Mike, then you are saying that on a 10-minute bell on a stacked vote in committee of the whole if the whips do not walk in then the bells will keep ringing. Is that what you are saying? That the 10-minute rule does not mean anything? That is what you are saying.

Mr. Breaugh: The government would then have to be prepared to proceed with the vote in the absence of the opposition, in other words, ignore the fact that some members are not ready to vote, and the government would then have to take the rather unusual attitude that "We don't give a damn whether you are ready to vote or not; we are going to vote."

Mr. Rotenberg: But the rules say that you must vote at the end of the 10 minutes.

Mr. Breaugh: I invite you to do so, but I think it would be a little chancy on your part.

Mr. Chairman: I would like to have Mr. Lewis comment, at least on the discussion up until now, to put us straight.

Clerk of the House: Thank you, Mr. Chairman. I have been thinking of this, of course, a great deal since the incident happened in Ottawa. In the first place, perhaps I should mention one precedent we do have from last session. That was perhaps a bit unusual in that the motion to adjourn the House was made during a want of confidence motion, and by the standing orders the want of confidence motion is confined to two and a half hours. So that long before 10:30 was reached the time for the main motion was gone, long ago. All that was left was the motion to adjourn.

If I am not mistaken, Mr. Speaker, it was by consensus of the House leaders that it was decided the time had run out and it should be cut off. On the other hand, as the Speaker has already pointed out, if it was on something really of a political nature, for instance in this instance it was on a very important bill, any Speaker might feel, as Mme Sauvé did, that she would be seen to be acting in a partisan way if she came down on one side or the other, and so let the bells go.

Their standing orders are the same as ours. They have an automatic adjournment at 10:00 o'clock, but this overrode it. As you know in our House, on a division on anything other than a motion to adjourn, the bells override it because if a vote is called on a second reading of a bill, for example, at 10:25 the bells ring until the whips come back and the House votes. The problem could happen here, as I say, if the Speaker felt he was in the same position as Mme Sauvé was.

Personally, if I may say so, I have always favoured a time limit on all bells, but what that time should be would be for the House to decide. I think it is safe to say that the majority of jurisdictions in the Commonwealth now do have time limits on bells. The main reason we do not or Ottawa does not is that, just as has been said, sometimes it takes the whips a long time to get their people in on a very important vote and they want to get as many in as they can. So perhaps the time limit should be a very generous one, even 10 hours perhaps, or something like that.

Mr. Piché: Or to give whoever lives, say, in northwestern Ontario a chance to come back. You would have to look and make a survey of where all the members live so that if the bells ring, they could be called to come back to Toronto to vote. In giving that opportunity then possibly there should be a time limit because certainly we do not want to follow the same procedure as happened in Ottawa.

Clerk of the House: I think the simplest solution is a time limit of some sort; what that time limit should be, of course, I do not even offer an opinion on.

Mr. Rotenberg: If we have a time limit as we do on the stacked vote bell and then at the end of time limit the bells stop ringing, but one opposition group does not come in, or both opposition groups do not come in, where are we?

Clerk of the House: We vote.

Mr. Rotenberg: Then, as you raised the point, is that a political thing if the government goes ahead and votes without people coming in?

Clerk of the House: The point is that in the ordinary vote the written rule in Ottawa and the parliamentary precedent in Ontario is that until the whips come back and report we do not vote, that is on a vote without a time limit. But if there is a time limit, you vote when that time is up. Just in closing, Mr. Chairman, may I point out that, as I said, I think a good many of the jurisdictions have time limits now.

Mr. Chairman: Yes, most of the provinces do.

Clerk of the House: A very interesting one that I mentioned--

Mr. Chairman: PEI has 10 minutes but they do not have too far to go.

Clerk of the House: The Globe reporter asked me about this, whether it could happen here, and I said yes, it is a possibility. I pointed out to her that there is a very interesting procedure in Australia in one of the jurisdictions, where the clerk has a large sand glass on his table. I do not know how many--

Mr. Chairman: Australia, you say?

Clerk of the House: I do not know what time the glass is, but as soon as the bells start to ring, he turns it over and when the sand has run out, the vote is taken regardless.

Mr. Chairman: It can only be an hour. I have never heard any glass any more than an hour.

Clerk of the House: Oh, you could have one.

10:50 a.m.

Mr. Chairman: Jack, would you like to say something?

Mr. J. M. Johnson: Yes, Mr. Chairman, I would like to say something on behalf of the whips. There is more to it than simply a matter of time. There is a little bit of politics that is being played in the whip's office and the three whips have the same problem. Sometimes is not simply a matter of getting somebody down from Thunder Bay.

Mr. Speaker: The point is you should not use the Speaker to do that.

Mr. J. M. Johnson: The Speaker does not have to be involved. The Speaker just sits there and waits until the whips come back. It has worked quite satisfactorily. There have been very few problems. The whips work well together. I think that there is a good relationship there.

You mentioned 10 minutes on certain votes, but everybody anticipates that, so you go accordingly. But on important votes like we had on Tuesday, you need some time. One party had to caucus. They could have stayed in caucus for a couple of hours. The point is that we should not tie the whips into certain time frames that they cannot work with, or else we will have to take the suggestion of the Clerk of the House and say 10 hours or something of that nature.

Mr. Chairman: Are you suggesting we should stay the same as Ottawa?

Mr. J. M. Johnson: No, I think you read the rule out just a few minutes ago.

Mr. Chairman: No, he says it does not apply.

Mr. J. M. Johnson: Why?

Mr. Chairman: It would not apply to Ottawa, is that not right?

Mr. J. M. Johnson: I am not talking about Ottawa. I am saying that in Ontario we have a rule that the House adjourns at 10:30 p.m.

Clerk of the House: Ottawa has it at 10:00 p.m.

Mr. Speaker: But it does not apply.

Mr. Rotenberg: It is a point of the timing; would something like a 10 hour rule--

Mr. J. M. Johnson: We set a precedent last spring.

Mr. Speaker: Yes, but the time had already run out.

Mr. Rotenberg: Would something like a 10 hour limit on a bell be something the whips could work with, just a long period of time to prevent this sort of thing and yet give the whips all the flexibility they need? That is what I am suggesting, and what I think the Clerk is suggesting. Not a 10 minute bell or an hour bell, but a five hour bell, or a seven hour or a 10 hour bell, something like that.

Mr. J. M. Johnson: Why can we not strengthen the regulation we have that at 10:30 the House adjourns?

Mr. Watson: Because that will work against you. Somebody will use that for a bell that would start at 25 after 10.

Mr. J. M. Johnson: How can the House sit beyond 10:30? I thought it had to be by unanimous agreement--

Clerk of the House: As you know, Mr. Johnson, many times we have sat well past 10:30 when a vote has been called at, say, 20 or 25 after and the bell started to ring and we sat there until the whips came in. It could be 11 o'clock, or half past.

Mr. J. M. Johnson: I assumed that was only because it was by unanimous consent, that no one had disagreed with sitting past 10:30.

Clerk of the House: No, it was because the bells were ringing for a division and the whips had not come back.

Mr. J. M. Johnson: What would have happened if a member had brought it to the attention of the Speaker that it was beyond--

Mr. Chairman: He would not be there, would he? Oh yes, there was always somebody in the chair was there not, during that time the bells were ringing?

Clerk of the House: Yes, but the point is they cannot be recognized.

Mr. Chairman: That is right. Nobody could have said anything, Jack; the bells would be ringing.

Mr. Epp: I do not know about these time limits that other legislatures use. If it is 10 hours or something of that nature, it seems to me that the amount of time used in bells might be more because there is a time limit. For instance, if you have a maximum of 10 hours, maybe they would stretch the time out longer because there was a time limit than if there was no time limit. It

would be interesting to do a study on that to see what is the average time that bells ring in Alberta or BC or some other province as opposed to ours. I do not know.

Personally, I favour a limit like they have in Great Britain, with eight minutes or 10 minutes or something of that nature. If they can do it there it just means they have to have their members there. You do not scatter all over. You do not bring them back from Scotland or some other place. You have that time limit. We could use that here.

Mr. Chairman: We have to get two more jets.

Mr. Epp: You know the way they determine the eight minutes there, as I understand it, is they have taken the furthest office, had a quick pace from that office to the Commons' chamber and determined that it took eight minutes to walk from the furthest office to the chamber, and that is why they have eight minutes.

Clerk of the House: If I could just add something to that. Up until a comparatively few years ago, we had no actual time limit in the standing orders, as you know. In fact, there was, you might say, a tacit agreement on a time limit because when a division was called, instead of the members getting up and leaving the chamber, as they do now, they stayed where they were. Everybody stayed in his seat, the whips went out and rounded up the few stragglers and chased them in, and the whole vote, from the time it was called until it was completed and reported, was about 10 minutes.

Mr. Chairman: Andy, did you have something you would like to add?

Mr. Watson: I was going to say that I found the situation in Westminster to be different because they finish the legislation every day. They take one piece of legislation and they know that at 10 o'clock that night they are going to vote on it, because they do something every day and at the end of that day they vote on it.

Mr. Chairman: In other words, they restrict the number of speakers.

Mr. Watson: Doesn't the government in fact move that the question be put at 10 o'clock every night?

Mr. Rotenberg: It is pretty well by agreement, I think.

Mr. Watson: It is by agreement that they do, but I was back one night and went over there at 10 o'clock, and there were quite a few there to vote because they knew it was coming up at 10 o'clock.

Mr. Rotenberg: Mr. Chairman, I guess there are really three things before us on the table at the moment. Mr. Breaugh suggested that we put in a mechanism for mandatory negotiation,

that the Speaker be given the authority, if we had the authority to do it. I do not at this point agree with that, but I think it may have some merit. Then there is the possibility of using the precedent of the 10:30 adjournment, and that has some problems. And there is the possibility of a long time limit on the bell, which the whips could accommodate and yet would prevent any unusual circumstance which could happen, say, eight, 10 or 24 hours or something like that.

This is the sort of problem, Mr. Speaker, that will come up, we hope, very seldom in this House, but it also is a very major one. I do not think it is the sort of thing we are going to solve this morning. Speaking for myself and as one member of our party, before I take a stand one way or another I would like to consult with some of the other members of my party and at least some of our caucus, our House leader, our whip and so on. Maybe others do too. I do not know how much discussion other members have had within their caucuses.

We have had a good preliminary discussion on this thing, and I would suggest that the debate on this matter be adjourned for either one or two weeks to give the members a chance to consider the various propositions, to discuss it with whoever they want to discuss it with in their caucuses. I certainly am not prepared at this point, having heard the various suggestions, to take a stand on my own or with the members of our party who are here, without some consultation.

I think this type of problem requires some consultation, because it is not just a minor rule; if it ever happens in this House it is going to be on a major political problem that will involve total party (inaudible) and so on. I do not think any party would lightly not come in for a vote after a reasonable length of time; I do not think any party would lightly call it a vote when no other party came in. It is going to be when you have a major problem.

I am pleased that the Speaker has brought it to our attention. I think it is something we can try to solve now when there is no hassle or major problem of this type and when the problem is not before us. I think we should come up with a solution, but that we should take a bit of time to consider it, and I would suggest, if it is acceptable, that the matter be deferred until an early future date of this committee.

Mr. Chairman: I do not want to see this thing shelved; I do not want to see it unduly delayed. I am sure most of the members feel that way. Although we may not be in this situation now it could very well happen at any time, and I am sure our House does not want to go through the agonizing exercise that happened in Ottawa during the last few weeks.

Mr. Watson: Mr. Chairman, to follow on what Mr. Breaugh said a few minutes ago, I think that if the argument which happened in Ottawa were to happen here it would be a political one, and if we were to settle this issue of the ringing the bells then we would be back with the issue of how many points of order

you could raise and how many points of privilege you could raise, because there are different ways of delaying the House on a technical basis. If that is what you are doing--

Mr. Chairman: What we're looking for, Andy, is a cutoff.

Mr. Watson: I know, but if you cut this one off, if you plug this loophole, if a loophole had been plugged in Ottawa then I am sure there would have been something else. There would have been a whole list of people to stand up on points of order. You would have had points of order for 24 hours straight.

Mr. Chairman: There would have been closure.

Mr. Speaker: May I just have a word on that? I think that from a political point of view the members of the Legislature have more opportunity open to them here for whatever tactic they want to employ. The problem in Ottawa was that all the loopholes had been plugged except that one, and that was the only one open to them.

11 a.m.

That is not the purpose of bringing it to your attention. Actually, I am seeking some kind of direction. You can filibuster--and when I say "you" I mean members of the Legislature--you can raise points of order, points of privilege and so on; I would not really want to see that diminished. All I am asking for consideration by the committee is whether or not there should be some kind of time limit on the bells.

Mr. Chairman: Is there any objection to laying this over until, say, two weeks from today? In the meantime, the clerk of the committee could get in touch with the various whips, ask for their opinions, probably also attempt to get some information on what takes place in other provinces and put this back on the agenda for, say, April 1. I believe that is a Thursday.

Mr. Speaker: That may be an auspicious date.

Mr. Chairman: Yes. He could consider the main suggestions that have been made this morning. The Speaker suggested a time limit, and there has been some support for that. Mr. Breagh was suggesting that a standing order be drafted to allow the Speaker to refer the matter to this committee or some committee of the Legislature. There has also been some feeling that we should not do anything. So probably if we put it back on the agenda for April 1 we could further consider the Speaker's request at that time.

Mr. Breagh: I agree with that, but I would like it to be clear, because I sense some confusion. What we are talking about is what is to be done when an impasse has been reached. This is not about how long it takes to come from Kenora.

Mr. Chairman: No. Right.

Mr. Breaugh: It is not about whether for pragmatic, practical reasons we can get this vote done in 20 minutes or half an hour or 10 minutes. This is about what the Speaker is able to do when a parliament reaches a total impasse, and I think Andy put his finger on it. I do not care what your time limit is. If we have reached an impasse in there, saying that this can go on for 10 days is just fine, but if on the 10th day when you crank it all up again the problem has not been resolved, if the impasse is still there, all you need to do is to find some other procedural device to continue the impasse.

So on the understanding that we are looking for some direction to provide to the House, to the Speaker, when an impasse has been reached in the Parliament, I am in agreement that you set it over; but I would caution members to try to understand that this is not a transportation problem.

Mr. Chairman: No. Right.

Mr. Rotenberg: Mr. Chairman, I have just a comment. Mr. Breaugh is correct except for one thing. When you reach an impasse in the House I grant that the opposition raises a lot of procedural points, and I agree with the Speaker that I do not want to plug the loopholes. From where I sit I believe the opposition should have reasonable rights to be able to delay and raise points and so on. But there is a difference between having an impasse when you are sitting in the House, where the Speaker does have control, and an impasse when nobody is in the House and therefore there is no way of doing things.

As long as you are in the House and the Speaker can come to a point where he says, "Well, we have had enough points of order and points of procedure," the Speaker takes precedence in these things. There is a difference between that and when the bells are ringing and we are out of the House. I do not disagree with Mr. Breaugh that an impasse can take many different forms, but I think the impasse of having the bells ring and people not in the House is a different kind of thing from having members sitting in their seats and using delaying tactics. If we resolve this problem and get everybody back in the House then the Speaker has some control.

So I do not disagree with you, Mr. Breaugh, but I think this is a slightly different case from any other one of impasse.

Mr. Chairman: Basically, the idea is to either stop the bells or use some mechanism to get the members back in the House.

Mr. Speaker: So the business of the House can proceed.

Mr. Chairman: Right. Okay. Thank you very much, gentlemen.

Mr. Speaker: Thank you.

Mr. Piché: Mr. Chairman, I have just one more item. You will provide us with some information about the other provinces. Could we have that even before we meet so I can start some

discussion on it? Also, when we are looking at this and discussing it with the other provinces, if the rules they have have caused them problems we should also know that. Maybe they came out and put a limit on it, but if this limit is causing them problems, what are they? Then we will be that much more knowledgeable in dealing with this matter.

Mr. Chairman: I think we can do that in two weeks all right, even if it amounts to a couple of phone calls.

VISIT TO ONTARIO POLICE COLLEGE

Mr. Chairman: The next item on the agenda, gentlemen, is the date of a visit to the Ontario Police College in Aylmer. The suggested date is Wednesday, March 31. Is this agreeable to most members? That will be two weeks from yesterday. Is there any comment on that? It is a bad day for me, that's the only thing.

Mr. Piché: We can't meet on a Thursday? Wednesday is going to be bad.

Mr. Chairman: It is an all day situation. If we are going to Aylmer, the day is pretty well shot. But we have to be back to the House on April 1. Does anybody else have any comments on that day? Is it all right for you?

Mr. Watson: I doubt if regular committees will be sitting on that Wednesday of the first week. Would I be right on that?

Clerk of the Committee: I believe the administration of justice committee will be sitting.

Mr. Watson: But social development, for instance, will not be sitting that day. It is scheduled to sit on Wednesdays and it will not be sitting the first week.

Clerk of the Committee: It has no legislation the first week. The only other committee that may be sitting is general government, which has a number of bills before it.

Mr. Watson: Do we have any duplications in that?

Mr. Breaugh: I don't have my calendar here. It sounds all right to me. The only thing I was wondering, are we talking about a day's travel up there and back?

Mr. Chairman: Yes, we would leave in the morning. It would not be any problem doing that, I think.

Mr. Breaugh: It sounds all right to me, but if other members have a problem with commitments on that day, I have no objection to putting it back another week or so.

Mr. Chairman: Is it all right with you, Andy?

Mr. Watson: Yes. As I say, it would probably be better earlier, because I happen to be on social development. It will not be meeting, but by the next week it may be.

Mr. Breaugh: Why don't we have Smirle canvass the committee members, because they are not all here, and leave it that it is tentatively scheduled for March 31. Let him do the canvass and see if everybody is clear.

Mr. Watson: Are we going to circulate members other than our committee? Are we going to limit this to the procedural affairs committee?

Mr. Chairman: What would you plan to do? Would you plan to leave on a small bus in the morning?

Clerk of the Committee: Yes, a small bus to take the members. There will probably be a few officials from the Ontario Police Commission along with us, if they want to come, instead of driving up.

Mr. Watson: I don't know whether (inaudible). Maybe we can do it through our caucuses, but there may be individual members who want to go.

Mr. Breaugh: Let's leave that for tomorrow. If somebody really wants to go, we can--

Mr. Charlton: The Solicitor General's critics, or somebody like that, might want to go. I can see that makes sense.

Mr. Breaugh: That is the kind of thing I am thinking of.

Mr. Chairman: I think that is a good idea. Smirle, if you would--

Mr. Charlton: The new Solicitor General may want to go too.

Mr. Chairman: Right. He may not have been there yet.

Mr. Piché: Could that create a problem? Why don't we decide here? There are enough members. If Smirle goes around, and one or two cannot go--what happens if all of us here are ready to go? Now is the time to decide if we are going or not.

Mr. Breaugh: No, I am saying that is the date we are going to go, but just to check on it.

Mr. Chairman: We have agreed on March 31, leaving from here in the morning and coming back late afternoon. I have toured the college on a couple of occasions and you are looking at three to four hours, with a lunch break or whatever. I would say you are looking at a minimum of four hours to see the college. If you are going to take the time, for example, to do a little shooting in the shooting gallery, and things like that, which you may be interested in doing--

Mr. Eichmanis: I think the Wolf Damage Assessment Board is probably quite a small operation, and I don't think there should be any problem with that. So it would really be four major ones, and that would be fine.

Mr. Chairman: So that is the first five then. Is that agreeable to the members?

Mr. Watson: The first five listed as possible agencies?

Mr. Chairman: Yes.

Mr. Piché: Including the Wolf Damage Assessment Board?

Mr. Chairman: It is a good balance, because the first two are going to take some time and certainly the last one will take some time. We will separate all you art buffs.

Mr. Eichmanis: We can go for a visit on that one, I am sure.

Mr. Chairman: To the art gallery?

Mr. Eichmanis: Sure.

Mr. Breaugh: Okay, I would move then that we choose as our agencies the first five listed: The Civil Service Commission, the Election Expenses Commission, the Wolf Damage Assessment Board, the Art Gallery of Ontario and the Ontario Mortgage Corp.

Mr. Watson: Which ministry is responsible for the Wolf Damage Assessment Board?

Mr. Eichmanis: At the moment I cannot recall which one it is.

Mr. Piché: It has to be Natural Resources.

Mr. Watson: It might be Agriculture and Food.

Mr. Chairman: Did you want a date?

Mr. Eichmanis: I take it the review would be for September.

Mr. Chairman: Review for September? We will set aside a sufficient number of days in September, I suppose, sometime after Labour Day, whatever is convenient. All right, gentlemen, that is great. We are making headway.

REVIEW OF ESTIMATES PROCEDURES

Mr. Chairman: The next item is discussion of supply procedures. There is a memorandum attached that Mr. Eichmanis has done for us and we also have a copy of the report of the standing committee on procedural affairs that the previous committee brought in with recommendations touching on this subject which we can refer to. Do we know what page that is on roughly?

Interjection: Page 12.

Mr. Chairman: Yes, starting at page 12; has everybody got a copy of the old report? All right. I think we will deal with John Eichmanis' memo. This is a pretty meaty subject as you know, gentlemen, and there have been a number of discussions about it. I think there is a consensus, or was certainly with the old committee, that there should be some change, some improvements and you will see that there is a proposal.

Our proposal has been to change the present method of reviewing and scrutinizing expenditure estimates and government economic policy by the Legislature. There seems to be, as I say, some consensus that there should be some change. The main purpose for the desire for change has been the operation of the estimates committee and the fact they take so long to deal with the specific ministries. Nobody seems to be happy with the operation of the estimates committee, the main reason being we really do not discuss estimates much, but it is a general catch-all committee dealing mainly with policy.

Mr. Eichmanis has some suggestions as to organization. There are five suggestions as to possible names of the committee. He sets out some terms of reference. You will notice the committee would receive all the estimates of the government rather than directing them to various committees in a particular policy field. The big change here is the review would be limited to actual expenditures and administration. Broad policy matters would be out of order. That, I am sure, will generate some discussion. It may be difficult to be that pure.

I certainly like the idea of the committee having power to review budget and other budgetary papers. I believe, Mr. Eichmanis, you have some pre-budget consideration here. In other words, before the actual Treasurer's budget is handed down, the committee would meet to consider a white paper or the budgetary plans of the government for that particular year. Is that correct?

Mr. Eichmanis: Yes.

11:20 a.m.

Mr. Chairman: I notice on page 3 you talk about a timetable. I was hoping the estimates would be well before the end of the House session. I was thinking that probably when we adjourn in June the committee would complete its work.

Have we some comments on some of these suggestions?

Mr. Rotenberg: Mr. Chairman, there is some merit in the general discussion. I think before we get into details on how we are going to do it--and it has been laid out very well--there really is no agreement, I do not think, in this committee, certainly not in the Legislature generally, on making a change from the present estimates situation. There is agreement that we have to make a change, but there is no philosophical agreement on what we are going to do. I think there are some guidelines. There are some things in here which have been tossed back and forth among us, informally and formally.

I would think before we get into the details of whatever committee is going to do we should try to get some general agreement and then by the caucuses, by the House, or whatever, of the general format of what is going to replace estimates in the tradeoffs. We can spend a lot of time getting into the details of a committee--when they meet, how they meet and everything they are going to do--but unless the House as a whole--and I guess it is mainly the opposition parties more than the government--is prepared to accept the framework of what we are going to do in total, not just this committee, then the thing is not going to fly.

I would suggest, Mr. Chairman, sort of accepting it philosophically, that we are going to have an estimates committee dealing somewhat the way it is. Who is the chairman, how many members there are or how often they meet really are not important at this stage. If we are going to have that kind of a thing, what else are we going to have?

John has made some recommendations for tradeoffs, such as supply days or opposition days or some other things--policy committees. If we can get an agreement on the general framework, then after that we can go into details. I suggest we discuss the framework, the tradeoffs and how the system in total is going to operate before we get into details because otherwise we are going to just flounder again.

Mr. Breaugh: I wanted to make some comments along similar lines because I think what is difficult about this is how do we proceed to do anything. I, for one, would be unwilling to consider an alteration in the estimates process in itself. I am prepared to talk about it, but I am not prepared to offer any concrete detailed work about changing the estimates process unless I see that in a context of a whole change in the way we are organized and how we operate day by day, short term and long term.

That really gets me back into this whole report on committees. The difficulty with that, as we found out in trying to go through that exercise, is that you can discuss little parts of it on and on, and maybe you can get agreement on parts of it, but how do you get the whole thing to fit? What I might suggest to you is that we proceed in this manner. I am intrigued with some of the notions which John has put into this current consideration of the revision of the estimates process. I probably would accept parts of it--in fact most of it--if I can take that and put it in the context of this whole committee report.

What I would be prepared to propose to you is that I would like John today to go through this proposal he has written out here. Second, I would then like to have the House leaders in to have a confab with them because they are going over much the same ground. Third, I would very much like to have a Thursday evening for other members who are interested in all of this to get a chance to debate it. It seems to me the obvious mechanism is to put the report on committees up for debate and let everybody have a go at it. At that point in time, I think we might be at a point where we are prepared to get down to a package deal that everybody can live with.

The advantage that we have compared with the federal House, whose committee has not met for two years, is that we at least have paper on it. We have some coherent thoughts on what might be done. I would like the House leaders in here because, by and large, they order the business of the House, so they have a different perspective on it and it would be useful to get that.

Mr. Chairman: Did we not have them in here to discuss this?

Mr. Breaugh: They have been in on several occasions to kick this around. What I am trying to get at is, if we are really going to change things, we are going to need the concurrence of a lot of people. The House leaders will have to agree that at least a debate on it will proceed. After that, it will be necessary to change some standing orders and do some reorganizing.

It is kind of a large task that is in front of us, and I am concerned that we do not exercise it as a debate about parliamentary procedure and how the Legislature functions; that it gets very quickly to something concrete--like this committee report--and that we have concurrence going through that everybody is aware we are contemplating these changes, and everybody has an opportunity to at least stick his oar in and participate in the debate.

It strikes me that the first order of business is to get the House leaders in and get agreement that we ought to have a general debate on it; get some direction, whether it is rejecting this report, or saying we will make people talk to the report. Then we might be in some position to change things. I am stuck in that position, as David put it, where I think the estimates are silly, stupid, and irrelevant, but they are the only thing I have. So I cannot trade them away unless I see a complete package of what reforms we are really talking about.

Mr. Chairman: Has this report ever been debated in the House?

Mr. Breaugh: It has not been debated. It has been presented, the House is aware of it, but it has never had the opportunity of debating it.

Mr. Chairman: Then arrangements should be made to debate this report.

Mr. Breaugh: I would think so.

Mr. Chairman: There is the subject matter right there in your recommendations.

Mr. Charlton: Mr. Chairman, I think Mike's suggestion that we also get the House leaders in here is useful for two reasons--first, to try and get agreement that members debate this report; second, I would judge that a number of comments--at least those made by the House leader of the Liberal Party and those made by the House leader of our party in the House over the course of

the last two weeks--indicate that their thinking on this report and the whole issue of how we reorganize the House has progressed somewhat since the last time we had them before this committee.

Mr. Nixon, for example, made some comments last Thursday or Friday with regard to reorganizing the whole committee structure in this place. I think their thinking has progressed somewhat since the last time we had them before the committee two years ago to talk about this. I think it would be useful to get from them just where they are at this point, in terms of ordering the business of the House.

Mr. Rotenberg: Mr. Chairman, I concur with everything that Mike says, except going to the House for debate. If you put this into the House, you are going to get people getting up and talking. You are going to get some interesting ideas, I agree, but a debate in the House on this kind of thing is not going to resolve anything, in my opinion, because when they go on public record, people have to take certain stands. I do not think that a debate in the House is going to end up with a vote because that is not going to get you anywhere.

Resolution of this problem has to be by negotiation and by agreement of all three parties. It is not going to be done by a vote in the House; it is not going to be done in a public debate. It has got to be in quiet negotiations over a period of time.

If you get into a debate, you may get some interesting views of individual members, but on the other hand, when you get into a public debate, you may get a bit of a hardening of positions of people. If you stand and say publicly certain things to get it on the record, then you have to defend whatever you are defending. Whereas if you can come to a committee meeting, or even have a meeting that is not a committee meeting, just some quiet negotiation sessions over a period of time, I think you can get a lot more done.

I do not really object if this goes to the House on a Thursday night and you get people standing up and talking, but I really think it might be counterproductive. As I said, it may get people taking positions as going on record on certain things which may be hard to retract later on, rather than having the quiet negotiations of the House leaders.

It is like what we were talking about before, with the bells and so on. It is not the sort of thing that we, as a committee, can resolve, although we can make certain suggestions. It is not the sort of thing the House is going to resolve in a formal session. It is the sort of thing that is going to bubble up and take some time.

I think Brian is right that there is evolving among the House leaders, among the leadership of all parties, a coming towards a consensus. You have got to do it by consensus. You have got to do it with our committee taking the lead, being the catalyst, with the House leaders and so on.

Mr. Chairman: The wheels of democracy really need some greasing.

Mr. Rotenberg: I feel hesitant about putting it in the House at this stage before we get a little farther down the road.

Mr. Breaugh: Let me respond to that, because I think what David says is true. I am not anticipating a resolution by having this committee report debated. That is not what I want. What I am concerned about is this simple problem: how does an ordinary member in this House get his chance to say his piece about the place? I agree that probably it will be by consensus and negotiation if changes occur. My real problem is, I do not sit with the House leaders. I do not make the deals, and I am one who is going to get very upset if they happen to sit, make the deals and come back to my caucus and say, "Here it is boys, it is all yours, this is what I have agreed to." I am going to tell him to take it and shove it. I do not want the thing to proceed that way.

11:30 a.m.

All I am looking for is an opportunity where probably the best thing in the world would be all the biggies leave the joint for an evening--and if it is a Thursday night that will be precisely the case--and anybody who is interested in this will have a vehicle by which he can put his position on the record or say whatever he wants to say, and then we have some small sampling of what the members here think about how the place operates. I think that would be useful.

Mr. Chairman: I cannot see anything the matter with having this report debated for discussion in the House. You do not have to have any vote or resolution of it, but there are probably members out there, members who are not necessarily members of this committee, and certainly former members of this committee, who would like to get on the record and give their opinion on this particular recommendation. We are becoming inbred or something here. Everybody is worried about discussing or bringing something out to light.

The fact is that we may find, as a result of a debate of this particular recommendation, that there are an awful lot of members in the Legislature who are happy with the present arrangement. I would like to know that. There are a few members of this committee who cannot see changing the situation. But let us find out about that so that we do not go on ad nauseam discussing the question of estimates and the procedure dealing with estimates. Let us resolve this thing. We are always postponing, and reconsidering six months down the line. It is nice to resolve something once in a while.

Mr. Charlton: Mr. Chairman, if I could take a moment to make a couple of other comments, I do not disagree with David that we are going to reach no resolution through the debate. I see two or three major advantages, though, in having that debate, those that the chairman has already suggested.

But in addition to that, we did this report a year and a half ago now. We raised it again last spring when this committee was reconstituted after the election, and it became very obvious

two weeks ago that even though we discussed this matter again last spring and referred this report to all the new members of this committee, most members of this committee have not looked at it yet.

By and large, the vast majority of members of the House have never taken the time to sit down and go through this report. A debate in the House will at least get those who are interested in the operations of this place, those that have some concerns, those that have found some problems, it will at least get those people to go through this report.

I see two major things evolving in the debate itself. We will get the comments of those people in the House specifically about the report and other problems that they see in the operation of this place. It will also give those members of this committee who were involved in the negotiations that put this package together--because you will agree that largely what we went through in this committee was the negotiation. You were on the committee at the time, David. Those other members out there in the House should understand the package as a package, the negotiation process that it has gone through, and understand that whatever package we ultimately come up with will not be, item by item, 100 per cent agreeable to everybody--that as a procedural package we have to come up with a package that gives something to both sides of the question, the government side and the opposition side, in terms of how this place has to operate. Those advantages can come out of a debate.

You are right, after that we are going to have to go through probably a fairly lengthy process of negotiation once we have heard the comments, once we have started people actively thinking about the kinds of things we have discussed in this committee. But at this point we have not accomplished getting them to think about it. Some people in this place have obviously thought
(Mr. Charlton)

we have discussed in this committee. But at this point we have not accomplished getting them to think about it. Some people in this place have obviously thought about it from the perspective of the individual problems they see, but there are not very many members around of the 125 who are thinking about the operation of this place and the global context in which this report deals.

Mr. Eighoffer: I go along with the need for discussion and I wonder, when some of these things are debated in the House, I often get the feeling there is just being time put in in a lot of cases. Would there be any point in this committee setting aside some other times right here, really presenting this through caucuses or any way to the members and ask the members to come in.

We can have a little freer, more open discussion in this committee. I would set aside four Thursday nights or something and have the committee sit in a committee room. I am wondering if we can get a freer discussion and a more open feeling from the members.

Mr. Rotenberg: I concur with what you say except for one thing, that if you sit here on four Thursday nights, we will sit here and twiddle our thumbs because nobody will turn up or very few will turn up. Whereas in the House--

Mr. Edighoffer: You do not think they would?

Mr. Rotenberg: I really do not think they would. It is a better system but I do not think we could get out--what I am trying to say, let us at least get some opinions from some members. I have a lot of reservations about it. Maybe you are going to get people taking firm positions on minor points. I think it would be a better opportunity for members who really want it. As I say, I would prefer the committee inviting all members to come in and getting a time to come in and present their views, but I do not think it will happen.

Mr. Epp: Can I just add something to that? My own feeling would be that, if they are not prepared to come to this committee on an evening that could be mutually convenient for everyone, why would they want to be in the House and speak to it on a Thursday night in the House? In other words, the only comparison I can give there is that I know there may be more people watching from the gallery, and it gives you a chance to grandstand in a sense, if you want to use that word and I am not trying to overplay that word.

If they are sincere about having changes and discussing it, then they should be equally as interested in coming before a committee as they would be in coming before the House. Maybe coming before committee might be more appropriate because you will get the people who are really interested rather than the people who want to speak in the larger chamber.

Mr. Breaugh: Let me test some waters. Are we in agreement that we at least ought to have a Thursday night debate on the report?

Mr. Rotenberg: I am not excited about it.

Mr. Breaugh: I did not ask whether you were aroused or anything. Are we in agreement?

Mr. Chairman: First of all, you realize that if we are going to discuss this report which is the previous committee's report, the whole report will be up for discussion. I would suggest that certainly this present committee should read that report. Frankly, I was suggesting we have a report in the mill now, as you know, dealing with items we have dealt with recently, and I was thinking possibly that recommendation 5 could be included in our new report. But I understand that would not be available or we would not be able to debate that until some time in June. Is that right?

Mr. Eichmanis: Well, by the time we get the report out--

Mr. Chairman: But the important thing I think is to realize that the heading on this is "Proposals for a New Committee

System." Because of that, I have no personal objection to that previous committee report being put on the agenda for discussion in the Legislature some Thursday night. We will deal, I would assume, mainly with the items this committee has been dealing with during this Parliament, namely, the particular recommendation 5.

Mr. Rotenberg: We cannot do recommendation 5 in isolation.

Mr. Chairman: No. The other items will be up for discussion and there is no reason why any member cannot go through the whole thing. I think that would probably be an advantage in any event because we will get current opinion on recommendations that were made in the last Parliament.

Mr. Rotenberg: The other point I want to make is that if this does go to a standing committee, I read the introduction or whatever it is signed by the former chairman of the committee, which is accurate but may or may not give the right impression, for those of us who were on that committee. There were three of us, and this report was not adopted by the previous committee. This report was simply forwarded to the Legislature for its comments.

11:40 a.m.

It is sort of implicit in what Mr. Breaugh's letter says to the members of the Legislature, but I think I want to make it plain, and if it goes to the House it has to be made plain, that this report was not adopted by the committee, it was adopted only for purposes of discussion. The recommendations in here were not the recommendations of the previous committee; they were sent forward only for discussion purposes.

Mr. Chairman: Do you see anything the matter with that?

Mr. Rotenberg: There is nothing the matter with that, but it has to be made very plain to the Legislature. The introduction implies, but it is not explicit, that these are not recommendations of the old standing committee, they are only matters which came before the committee and were sent for discussion without recommendation.

Mr. Chairman: So do you have any objection to this committee today adopting this report for discussion purposes only?

Mr. Rotenberg: Yes. I do not want to use the word "adopting," but "forwarding to the Legislature without recommendation." It has to be very plain that this is not a recommendation of any kind.

Mr. Chairman: All right. Let us do that then. You wish to forward this report to the Legislature for discussion only without recommendation?

Mr. Rotenberg: Yes. However you put it, it should be made very plain that this committee and the previous one did not adopt the recommendations.

Mr. Charlton: "This committee recommends that the House consider the proposals as set out in..."

Mr. Chairman: Yes, something to that effect. We can get it on the agenda for an early Thursday night and debate it.

Mr. Rotenberg: I really am hesitant about it, but if the consensus is we should have a debate, maybe something will come out of it.

The problem again, as Brian says, is that every party has a duty roster and the whips are going to run around saying, "Okay, who wants to speak on this?" Nobody is going to be giving party positions, and anybody who does give a position is going to be small-c conservative as far as changing is concerned.

I think that if it goes forward for debate, it should go forward a little further along in the process. At least ask to have the House leaders in and maybe get some idea of where we are going before it goes into the Legislature.

Interjection.

Mr. Rotenberg: I think if it is going to the Legislature for Thursday night debate, it is premature at this time. I think it should go to the House leaders, and maybe if the House leaders agree, which they have not really yet, we should at least get into the problem seriously--aside from this committee, I do not think anybody will really agree that we are going to get seriously into the problem--then maybe there is some chance for caucuses to discuss it, and then at that stage I think it should go to the Legislature. That is maybe a couple of months along the road.

Mr. Chairman: Is there any reason why we should not invite the House leaders to our next meeting?

Mr. Breaugh: I am in agreement with that. Just to respond to David, the only reason that I am kind of firm on the idea that a Thursday night debate occur is that I would really be upset if a major reform of committees and how the Legislature functions were all put together without giving at the very least an opportunity. Whether they are interested or not, we shall see.

Mr. Chairman: Yes. Then they would have no reason to complain later.

Mr. Breaugh: That is right. At the end of this process, I think we want to be able to say: "Well, listen, we gave every member the opportunity in a Thursday evening debate to say his piece. If you don't like this report, what are your ideas? If you don't like the things that are recommended here, what do you like?" At least the opportunity is there. If they choose not to exercise that, and we proceed to bring the House leaders in and great changes take place, everybody has had a chance to have his say.

Mr. Watson: I do not know whether they will speak on it or not, but I think you will find that in the estimates process, bringing it to the House will at least give members of the cabinet a chance, if they want it, because I know that there are cabinet ministers who welcome the estimates and there are others who do not welcome them. Some of them may say: "Sure, we don't talk about estimates, but my God, you can't talk policy without talking dollars. Therefore, we should leave the thing the way it is. Sure, you may not talk about them, but boy, the dollars are in the background, and we could have different policies if we had unlimited dollars."

There are others who say it is just grandstanding by everybody. So it would provide them with an opportunity to get up and say their piece if they want to.

Mr. Breaugh: What gets me is, I cannot for the life of me see three party lines in here. I do not see that there can be, on a report like that, a Liberal position, an NDP position and a Conservative position.

I think the most important thing about it is that we at least have done some spadework on this. We are not in the position of the federal House, where a big impasse is imminent, but I do feel very strongly that if some of these changes do not get made--we have come out of two minority parliaments where a lot of concessions were made kind of off the cuff, and we are back into a majority parliament.

The question remains, are we really going to try to change this place and make it an effective Legislature, or are we just going to jump right back into the way things used to be, full tilt, no sense, no brains, just party positions getting put and to hell with trying to make any sense out of the process? I really think that if we don't move early in the life of this parliament and put these changes in place, they are just not going to happen.

Mr. Chairman: I would suggest, gentlemen, that we invite the House leaders to our next meeting, which is tentatively set for April 1, and that for their own benefit they be sent a copy of this memorandum we have before us today, a copy of today's Hansard and a copy of the previous committee's report, so they will have some background information which will assist them in our discussion at the next meeting.

Mr. Rotenberg: Mr. Chairman, I concur in that except I think it would be a great advantage to have all three House leaders here at the same time so they all hear what each other says.

Mr. Chairman: Right. Oh, yes.

Mr. Rotenberg: I would suggest that, instead of saying at the next meeting, we should have it as soon as possible and all three House leaders can attend.

Mr. Chairman: No, no.

Mr. Rotenberg: If you invite them and only one of them shows up--

Mr. Chairman: All right. It may be impossible to get three at the same time, but let's try for April 1.

Clerk of the Committee: The House leaders usually have their meeting every Thursday morning at, I think, 11 o'clock. Perhaps we could meet early, say, at 9:30.

Mr. Chairman: Let's say 9:30, and that will be the first item on the agenda on April 1. Is that all right with everybody?

Mr. Charlton: If we have all three of them here, they won't have a House leaders' meeting to go to.

Mr. Rotenberg: And it might be an advantage because we are going to be dealing with the bells at the same time.

Mr. Chairman: Right.

Mr. Eichmanis: If I can just make one final comment, what I have written up here as the memorandum fits into recommendation 5 of that report. What I have tried to do is to flesh out all the implications, the permutations and the combinations, because the recommendation in the formal committee report is a general recommendation. What I have tried to do is to put some flesh and bones on that recommendation to see how it would actually proceed or work out.

My suggestion would be to have that memorandum read in conjunction with the recommendation so that the members will understand what the tradeoffs would be in this situation, what would be required in changing the standing orders and so on.

Mr. Chairman: Is there any consensus that we go through this quickly this morning in case there are any individual questions on any of the points that are raised? Do you want to do that, John? Then people can stop you and ask any questions.

Mr. Eichmanis: Okay. The name of the standing committee, of course, may be just an arbitrary decision that the committee, or whoever is responsible, will have to make.

The terms of reference are somewhat more important. The committee would automatically receive all the estimates, which means it would be the committee solely responsible for estimates and would free the other committees to do other things. The committee would have the power to select any number--presumably a small number--for detailed discussion. Then there are the other kinds of documents that it could review. The committee would have the power to send for persons, papers and things, hear witnesses and could conduct open public hearings and hire staff.

The next recommendation is to give the new standing committee power to make recommendations with respect to estimates, i.e. to make substantive reports, which would be debated in the House on the allotted days. This is an important consideration. In Westminster, they have provisions for making substantive reports, and it may be useful to consider that here.

The size of the committee: My personal preference would be for a smaller committee since the kind of detailed work it would be doing would probably fit better within a smaller committee than a larger committee.

11:50 a.m.

The tenure of the committee would be for the life of the parliament, and there would be no substitutions except for sickness and that kind of thing.

Mr. Chairman: You mean no changes from session to session.

Mr. Eichmanis: Yes. The idea would be to build up the expertise of that committee for the life of that parliament. If you are dealing with figures, when you are coming in halfway through some kind of review process and you have not been following it, it would be kind of hard for a member to pick things up halfway through. I think it would be a wise idea to have that provision.

The question of chairman: I have indicated a number of options there.

Mr. Chairman: You have included them all, particularly (d) there.

Mr. Eichmanis: Yes. Those are options that the committee and House leaders can look at.

Mr. Charlton: Just before we go any further, perhaps we should come to a clear understanding that, although there is no substitutions on the committee, that does not preclude, for example, critics coming in to make comments and ask questions.

Mr. Eichmanis: Right. The changes I am referring to would be changes from the ordinary practices already in place rather than changing the other practices.

There has been debate in various other jurisdictions that this committee, the expenditure committee, should be like the public accounts committee, that is, the chairman should be an opposition chairman. There are some persuasive arguments in favour of that, but again that ultimately depends upon how matters are negotiated and resolved.

The nature of the committee: There are arguments both ways as to whether it should be whipped and follow partisan lines or unwhipped and follow nonpartisan lines.

Mr. Rotenberg: That's something you can't put into rules.

Mr. Eichmanis: No. But I mean as part of the negotiations and so on which would take place in terms of how it eventually looked. Of course, under the British system the select committees are not whipped, and there is some advantage to being unwhipped.

I think it would be important for the committee to have a small staff or two or three, such as a tax accountant and an economist whose specialty is public sector economics, to aid the deliberations of the committee.

In some ways the more important section here is the tradeoffs. I have indicated what the overall tradeoffs would be between the government getting time free for consideration of government business and the opposition having the opportunity to debate policy matters.

With the estimates now being handled by one committee and not getting the chance to debate policy or to raise policy matters during estimates, the opposition would have the opportunity of having 15 allotted days during a session where it could raise subjects for debate.

Mr. Chairman: Just getting back on the subject of tradeoffs, are you saying this proposed committee would consider bills?

Mr. Eichmanis: No. I am saying that to the extent the estimates--

Mr. Chairman: That it gives you time off for it?

Mr. Eichmanis: The policy committees now do estimates, bills and special studies. Taking the estimates out of the policy committees then frees those policy committees to do government bills and to get those through the committee stage a lot quicker than they now do. So that is the tradeoff there for the government.

The allotment of a specific number of days for the opposition is something that exists in the standing orders of both Westminster and Ottawa and would appear to be in order here as well.

I have indicated there would be an option, namely, that debates can end in division. What I mean there is that the report from a committee which goes to the House should be allowed to be debated in the House and to end in a division, and the opposition should be given the opportunity of voting no confidence, but the number of those should be limited; I say five, but it could be any number.

Then, because the policy field committees would no longer be dealing with estimates, they would be given the power to initiate special studies with respect to policy and administration. There is a provision now in the standing orders where 20 members by standing can refer an annual report to a standing committee. My personal preference would be that the actual power be in the standing orders, that annual reports are automatically referred to standing committees rather than having 20 members standing.

Timetable: The committee, after receiving all the estimates and after selecting which estimates it would review in detail, must report all other estimates out of the committee by a date

determined by the committee. In other words, the committee would be reviewing in detail four ministries. There are X number of other ministries that would not be reviewed that year. The committee would then determine, say, by June 30, that all those other estimates that it did not look at would be referred back to the House by June 30. They would determine that once they made up their mind which ministries they wanted to look at in detail.

It would not be quite like the guillotine they have in Ottawa. Those estimates they did not look at in detail would in a sense be automatically approved by June 30, whereas in the case of the estimates they wanted to look at in more detail, they would have the opportunity of looking at those until the end of the session. In doing a detailed analysis of the estimates, they would need time to look at it in some detail first of all, but at the same time whatever report they finally came down with, the idea is not to influence necessarily the estimates of the year they are looking at, but to influence the ministry and the government in the following year.

This ties in later on with the suggestion of a need for a retrospective kind of look at the estimates over a number of years, how money has been spent over a number of years, 10 years preferably, so that there would be a detailed look at the overall picture of how a ministry is going over a number of years. Then in its report the committee can have a kind of analysis of what direction the ministry should be going in terms of different programs, depending on how that retrospective look has taken place.

The committee would need time to do that, and therefore it would not reach the end of the analysis by June 30, but it would have to the end of the session, which takes place now with all the estimates. In this case it would just be restricted to those special ministries that the committee wanted to look at in detail.

I think it would be useful, as in Britain and in Ottawa, for the Treasurer to prepare a white paper on public expenditure and that the white paper contain information on expenditure plans and projections for a five-year period on a program basis and on the basis of economic categories of expenditure, really just on the basis of the estimates by vote and item.

In addition, the white paper should also project revenues on a year-by-year basis and present information on the government's medium-term economic forecast and the assumptions behind it. As I say, this is what is being done in Ottawa and in Westminster.

I have some difficulty with the whole question of tabling of estimates. The present procedure now is that after the budget--they are usually presented after the budget if I am not mistaken--

Mr. Chairman: Right. I think there are sometimes one or two ministries that they go ahead with before the budget, do they not?

Mr. Breaugh: Yes.

Mr. Eichmanis: I think it would be important that the estimates be presented to the House as early as possible so that the expenditure committee would have the opportunity of having an early look at exactly which ministries it wants to look at and not delay it too long. The suggestion is that the estimates be tabled at the opening of the spring session, which would presumably be sometime in early March. I would prefer it even earlier than that, but--

Mr. Chairman: What would be the relation of that to the budget?

Mr. Eichmanis: The thing is that if the budget papers are referred to the committee after the budget has come down, then the committee may want to look at the budget. If you have the estimates coming before the budget, then the committee has already begun its work, so it has some idea what direction it wants to take on the estimates. Then if it wants to refer to the budgetary papers, it already has some work behind it, whereas if you have the estimates and budget coming down at the same time, you have got this mass of work to do all of a sudden--you have got to do both the estimates and the budget--and that would be just too much to handle at one time.

12 noon

As I say, I would prefer the estimates coming down early in the new year rather than even waiting as late as the spring session so that the committee has an option before the budget to begin its review of estimates, and so when the budget does come down, the committee can take a break and look at the budgetary papers, make a report, and then go back to doing the estimates for the rest of the session.

Mr. Chairman: It makes the budget a little less dramatic, does it not, on that particular evening, with all the secrecy surrounding it?

Mr. Eichmanis: That is another question, namely, whether that whole budgetary process should not be made more open. Mr. Mulroney has gone on record that he would like to see that opened up. Mr. Donald Macdonald has suggested that whole process should be opened up. The Canadian Tax Foundation has suggested that whole process should be opened up. The idea of opening up that whole budgetary process is in the air. Whether that is something that this committee would want to consider as well as part of its recommendations, of course is up to you.

Mr. Breaugh: This would be a kind of measure somewhere in between. Totally opening up the process, really the tabling of the estimates would say, "Here is the first indicator of what kind of money we are spending this year;" and then the second big piece in that puzzle would be the presentation of the budget, which ties together what we are spending, what we are bringing in and our long-range plans.

Mr. Eichmanis: Yes. I did not want to suggest the opening up of the whole thing because that is a really complicated problem, and I did not want to introduce that at this time. It

might have everybody in a real tizzy about it, but that may be something to consider further down the road. For the moment this is, as Mr. Breaugh suggested, an intermediate step.

I think this is something that may be difficult to effect in practice, but it seems to me that it would be important for the committee to have access to government-held information, particularly any government-initiated program evaluation studies. For one thing, it would save an enormous amount of time for the research staff because they, in a sense, have to do that themselves, which is just a waste. I think that where the government has made studies, and usually these are studies made by outside consultants and so on, those studies should be made available to the committee as part of its deliberations.

I also suggest that the format of the estimates should be changed to include retrospective statistics on program spending for at least 10 years so the committee would have an overall picture of where a given program has been going for the last 10 years, so that the analysis can be in better focus. Those are fairly minimal requirements, I think. I do not think major changes are required there.

There is nothing particularly startling in the mechanics of changing estimates. You would eliminate the committee of supply since all estimates would go automatically to the new standing committee, so there would be no committee of supply.

All the standing orders that presently deal with estimates will have to be changed to reflect the new expenditure committee and its operations. The new standing orders will have to include terms of reference for the new standing committee's size and composition and the tenure and powers of the committee. This is the way the British do it; they incorporate all that in their standing orders.

As well, the new standing orders would have to incorporate the terms of reference and so on for the new policy field committees, and they would have to be in the standing orders on a permanent basis. Now they are given certain powers, but the powers are given each session. We set them up each session. These would be permanent committees in the standing orders with permanent powers established by a standing order.

Number 5: In order to deal with the question of allotment of days, the parliamentary session would have to be divided roughly into two terms, which is more or less the way things are now, spring and fall, allocating supply days during those terms when various estimates, etc., are considered, for example, spring when main estimates and budget are considered. For interim supply, you would have 10 allotted days during which the opposition can raise matters of supply. As in most jurisdictions they do not relate to supply but are debates the opposition has deemed important.

Then in the fall when you are really dealing with largely the supplementary estimates, you would have only five allotted days. The greatest number of days would be in the spring session when the main estimates and the budget come down. During those

allotted days, when the committee came out with a substantive report on the budget, that report then could be debated on one of those allotted days during the spring session. In the fall when it came down with its final report on the estimates it was considering in detail, the House would then have the opportunity to debate that report in the fall period.

Mr. Chairman: The last item is concurrence debates. How would you do that?

Mr. Eichmanis: They certainly would not be needed. Right now there is a committee of supply and the various standing committees to look at estimates. You then have to have concurrence in the House on the approval of the estimates and so on. You do not need that under the expenditure committee system. You would not require that because you would have debate on the committee's reports on the allotted days rather than as it is now .

Mr. Chairman: Are there any questions on this by any members?

Mr. Eichmanis: There are a lot of things in there that have to be looked at and have to be weighed and balanced and it requires some detailed consideration of those proposals. In making up the memorandum, I have tried to go over all the information that we have received and all the literature that has dealt with the question and I have tried to put the best package forward.

Mr. Chairman: Thank you, John. I think you have covered the subject pretty thoroughly. Certainly these are points for discussion when we meet with the House leaders and points that we can consider when we debate the report of the previous committee. Are there any other items?

Does the clerk have anything further he wants to add? No. Then we will adjourn. I expect we will be meeting two weeks from today, gentlemen.

The committee adjourned at 12:08 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

HANSARD SERVICE
VISIT TO ONTARIO POLICE COLLEGE
DIVISION BELLS

THURSDAY, APRIL 1, 1982



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

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Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, April 1, 1982

The committee met at 10:16 a.m. in room 228.

HANSARD SERVICE

Mr. Chairman: I call the meeting to order. I have a letter from Mr. Elie Martel regarding Hansard service. He suggests an amendment to section 90 of the standing orders to include subsection (c), reading, "On the direction of a standing committee, full Hansard service shall be provided of certain proceedings of the committee other than the consideration of estimates."

If I remember correctly, we dealt with this in our report, which is still to be printed and presented to us for approval. You will remember we dealt with a lot of items concerning the standing orders. One of the items, if I remember correctly, was a result of a motion of Mr. Breaugh that standing order section 90 be changed so that there would be full Hansard service unless otherwise ordered by the committee. So I would assume there would automatically be full Hansard service.

I think that really answers Mr. Martel's request. It is just a matter of waiting until John Eichmanis has that report ready with those amendments, including the amendment to section 90, which will deal with Mr. Martel's request. I will raise it again with Mr. Breaugh. Mr. Forsyth could reply to Mr. Martel and indicate that has been looked after. We will send him a copy of the draft report when it is available.

VISIT TO ONTARIO POLICE COLLEGE

As you know, gentlemen, because of the illness of the chairman of the Ontario Police Commission and because there were only about four members of the committee who indicated a desire to go to Aylmer yesterday, along with the fact that the party critics of the Solicitor General were invited but were not available, nor was the minister, the tour was cancelled. I am just wondering if there is any other time that would be convenient for the committee to tour Aylmer. Wednesday is probably the best day of the week. Is two weeks from yesterday, which would make it April 14, suitable?

There is really no sense in laying on a trip of this kind which involves the Ontario Provincial Police, the staff down there who would have to be prepared for us, to lay on a luncheon and things of that nature, unless there is a real desire by the majority of the members of the committee to go. Otherwise we should forget about it.

This, as you know, was as a result of an invitation given to us by the chairman when he appeared before us in January. He invited us to spend a day at Aylmer--and there seemed to be a consensus in favour of that--to further our education in the police commission's

activities and duties and also to get information on the training of police officers. How many of you find April 14 convenient?

Mr. Edighoffer: Right off the bat, that is a short week, I think. Monday is a holiday that week.

Mr. Treleaven: I have the justice committee every Wednesday, so probably no Wednesday will be satisfactory.

Mr. Chairman: I think we agree it has to be a Wednesday. Nobody will go on Friday, and everybody is busy on other days. The House sits Monday, Tuesday and Thursday, as well as Friday.

Mr. Mancini: Why do we not send the clerk on Saturday? He can give us a full report when he gets back.

Mr. Treleaven: I have been there. They lay on a good spread. I have been there when there were bonspiels.

Mr. Chairman: It is a very interesting tour. It is quite a facility.

Mr. Rotenberg: Mr. Chairman, I have a similar problem. I have to sit on the general government committee every Wednesday from now until about June. I know Mr. Epp and Mr. Johnson have the same problem, and also Mr. Lane, because we are dealing with the Planning Act. Wednesday, April 14, is a bad day.

Mr. J. M. Johnson: Why not set it aside for three or four weeks and then take another shot at it?

Mr. Chairman: I will do that. When we get going in the spring, things get busy around here until about the end of June; there is no question about it. Time gets tighter, and we get into estimates after the budget, things of that nature. I will do as Mr. Johnson suggests and raise it again in three or four weeks. Perhaps we could lay it on for a day in July or August, whenever it is convenient, possibly as part of a two-day or three-day meeting period.

TRIP TO AUSTRALIA

Mr. Chairman: The next item is the Australian trip and the dates suggested are the second week in September and the first week in October. Is there any preference to what month?

Mr. Rotenberg: There is a little town called Australia, Illinois. Isn't that where we are going?

Mr. Chairman: Then there is a stopover in Fiji, or is it Tahiti?

Mr. Rotenberg: Both.

Mr. Chairman: Who is going to say "April fool" first?

Mr. Breaugh: I have to go to Iraq to pick up some Malibus.

Mr. Chairman: There must have been something about those Malibus.

DIVISION BELLS

Mr. Chairman: The next item is the question of division bells. I am sorry we do not have an agenda this morning, gentlemen. You have in front of you a copy of a memo from the clerk which compares jurisdictions.

Clerk of the Committee: I sent letters to the three party whips. The letter you have before you from Mr. Ruston indicates that he wants to take it to his caucus and I expect that the other whips, Mr. Gregory and Mr. McClellan, will also be taking it to their caucuses.

Mr. J. M. Johnson: I will speak for Mr. Gregory. We discussed it this morning and I think the feeling was that the motion should possibly be tabled and discussed by the committee, and then each caucus should have an opportunity to discuss it before any decision was reached. They felt there was some merit in it. They naturally wanted the members to have an opportunity to discuss it. If Mr. Rotenberg were to table the motion formally, we could discuss it, if we wanted to, at this time and refer it back to the caucuses as Mr. Ruston suggests.

Mr. Rotenberg: Mr. Chairman, I agree with what Mr. Johnson says about putting this motion forward for discussion purposes. I do not expect it to be passed today or in the near future, but we can discuss it briefly. I have looked over what has gone on in other provinces and it is interesting. Every province has years and years of precedents and every legislature gets used to what is going on in its province. I have given some thought to this and have had some discussion based, really, on what happened in Ottawa, and if what happened in Ottawa happened here in the same circumstances, what could we do about it that would be reasonable.

Mr. Mancini: Are you against what happened in Ottawa, what Joe Clark did?

Mr. J. M. Johnson: He is not saying that.

Mr. Mancini: I think we should know.

Mr. Rotenberg: Would you let me finish? Then you will be more than free to ask questions. There was a consensus, I think, at this meeting two weeks ago that what happened in Ottawa would not be a good thing if it happened in our Legislature, and there was a consensus in Ottawa similar to that. If a party takes advantage of the rules, that is their prerogative. But it would seem to me that the image of Parliament in Ottawa--and I am saying this on a nonpartisan basis; I am not saying who was right or who was wrong, who won or who lost--suffered because of that. I think if we had a similar thing in this Legislature the image of all of us would probably suffer.

We had a discussion two weeks ago and two philosophies were brought forward. Mr. Breaugh discussed the possibility, if we reached that sort of impasse, of having it come automatically to this committee to try to settle it or have the Speaker call the House--that sort of thing.

There may be some merit to that type of proposal but it seems to me, on reflection, if we had that kind of impasse they had in Ottawa, we would only have that kind of impasse if the House leaders would not talk to each other--that was one of the problems in Ottawa, the two House leaders. Our friendly colleague from Wentworth, or wherever, was not involved. He was acting as mediator, but it was just by the luck of the draw that his party was not involved.

If we had that kind of impasse and that kind of feeling, by having the matter come, say, to this committee, we would all sit here and look at each other and we really could not reach any conclusion. If the House leaders are at a mandatory meeting, if they are not going to talk to each other, they are not going to talk to each other.

The other concern I have with the proposition Mr. Breaugh brought forward was it, in effect, brought the Speaker into it in a way that made the Speaker try to force something to happen and, no matter how it came out, I think the Speaker would have to suffer because he would be put in a position of appearing to take some sort of a side between one party and another. I am alluding to those few days in Ottawa when we were watching the two House leaders on TV and so on. Had the Speaker intervened at that stage, had she called the House leaders in, at least one of them--I guess probably the opposition House leader because of the partisan issue--would have accused the Speaker of being partisan in trying to force something on them that she had no right to do, and so on.

I have a lot of hesitancy in getting the Speaker involved even as a mediator because it is going to put the Speaker in a kind of position, in my opinion, that could lead the Speaker to being accused of partisanship and could lead to a situation where the Speaker might lose a fair amount of his or her credibility. This is not a black-and-white situation. I have a lot of hesitancy, even though I can see some merit in what Mr. Breaugh said.

10:30 a.m.

I mentioned the other day and I put into the form of a motion--I might say this motion has been drawn up by the clerk as I asked him to draw up a motion that would implement this--which in effect says that except for those times with limited bells, which are for quorum calls, for stacked votes, for the Thursday afternoon thing, which we will leave alone, but where we now have an unlimited bell, recognizing it is an unlimited bell and that when the whips come in the vote takes place, I picked a number of eight hours. I will tell you why in a moment, but that is not a firm situation. After a reasonable period of time the House would come back in and we would have to take the vote on whatever the motion was.

That is not a perfect solution either, of course, because no matter how you bring them back into the House, if there are two parties at an impasse they are going to look at each other and there is going to be a stony silence. We take the vote, and then maybe another procedural motion will happen and out they go again.

I think there will be two advantages to the proposition I put forward. One is that whatever the vote was--relating back to Ottawa it was the vote on adjournment--that vote would have to be taken basically the same day, before we went out that day. Then we would come back the next day and start afresh and there would be another question period and so on. Granted that if an opposition party is stonewalling, it could pull some kind of procedural motion at five minutes after two the next day and force a division on a procedural motion by challenging the Speaker's ruling and out they go again for another eight hours and another day.

I think there would be some difference in perception and some more pressure on any party that is trying to pull this kind of a stall if it had to bring in a new motion every day and had to bring the House back in every day. I think there would be more pressure on any party to come to terms with the fact the House has to meet if they were in there every day and had to bring a new procedural motion every day than if they were just out on the street for the one motion.

Because everybody is in the House and has to come back each day into the House where all the House rules apply, I think there is some greater possibility of getting some sanity and getting the House back work than if members are out there in the corridors and talking to the press. One procedural motion has certain merits, but there has to be one every day, and in a two-week period I think the party who did it would look a lot worse than the party who did it in this case.

Secondly, the reason I mentioned eight hours is that if a party does come in during this procedure and at five after two makes a motion to adjourn or a motion for something that the Speaker rules is out of order and goes out for eight hours, the members then come back before 10:30, so at least one more motion could be put that day for some other thing and possibly some form of business could get on the books to proceed.

Having given this quite a bit of thought in relation to the Ottawa situation, I think getting the members back into the House puts a certain amount of pressure on everybody that would not be on them if we were trying to negotiate in the corridor or in our private offices or somewhere else.

It is far from a perfect solution to this problem if it ever happens, but if in Ottawa they had this kind of a limit on that situation, I do not think it would have gone on for two weeks. The pressure would have been there to solve the thing much more quickly. I put this out for discussion. To formally move the motion, I will have to read it so that everyone has it in front of him..

At the end of discussion I will move that the matter be tabled at the discretion of the chairman to bring it back after everybody has had a chance to talk to the caucuses. The one thing I do feel about this and any major procedural change in our standing orders--this is a personal opinion and may not be shared by all members of my party--is that standing orders are something that are a little different to anything else we do around here. Unless we have, really, the consent of all parties to a change in standing orders, we really cannot do it.

There may be some little details that we may have a vote on, but unless there is a philosophical agreement among all of us, I would not be in favour of forcing a major change in standing orders on other parties, I do not think it is going to work, so I would like to try to get some consensus on how to handle this problem. As I said at the beginning, we seemed two weeks ago to have a feeling that we could deal with this in isolation, despite Mr. Ruston's letter that there are other things we may want to do. This is perceived as possibly a problem and we seemed to have consensus two weeks ago that we should plug this loophole or solve this problem independently of anything else we wanted to do in standing orders. If that is still the feeling, I hope we can reach a consensus.

Mr. Chairman: Thank you, Mr. Rotenberg. I wonder if it might be a good idea to go through the clerk's memo which deals with the situation not only in our own province but in three or four other provinces--I guess all of them--including the Northwest Territories. If we briefly go through that, then we will get a better picture of the situation across the country and we can get back to Mr. Rotenberg's motion. Do you want to go ahead with it?

Clerk of the Committee: Yes. I will go through it and briefly summarize the points.

In Ontario, under standing order 2, there is a provision for a quorum bell of four minutes. Dealing with motions of confidence, standing order 63(c) says: "If a recorded vote is requested, the division bell shall be limited to five minutes." Standing order 64(f), dealing with private members' public business, provides: "If a recorded vote is requested by five members, the division bell shall be limited to five minutes." Standing order 64(f) says: "...where the time for a vote in the House is pre-arranged by agreement of all parties, the division bell shall be limited to 30 minutes." Standing order 95(a) deals with divisions that are deferred in committees of the whole House. Where there is agreement to defer those divisions, the division bell is limited to 10 minutes. In any other circumstance, there is no limit on the division bells in Ontario.

In Newfoundland and Labrador, there is a three-minute maximum quorum bell. For division bells, it is a maximum period of 10 minutes, "or for such lesser time as may be signified to the Speaker by the government and opposition whips." As the Clerk of the House, Ms. Duff, has indicated, they do not have the practice of the whips coming in and bowing to the Speaker to signify that they are ready to proceed with the vote. In all cases, the Speaker will proceed to put the vote after 10 minutes even if the whips have not come in.

In Nova Scotia, there is a one-hour time limit imposed on the ringing of division bells. The Deputy Clerk, Mr. MacArthur, indicated that this was a relatively new provision, and that Michael Ryle, with whom we visited in London in January, was there to assist them in 1976 with a review of their standing orders. He had proposed a 15-minute maximum bell, but the rules committee that reviewed his proposals recommended it be increased to an hour to put Metropolitan Halifax members and members who are in government offices about the city time to get to the assembly to vote.

As I mention in the memo, it is a custom that the Speaker waits until the whips have come into the House before he puts the question. Mr. MacArthur has indicated that the bells never ring for more than 10 or 15 minutes. There has not been any abuse of the standing order, a fear which was expressed in Saskatchewan when they considered the matter, that the maximum might become the minimum so that if you proposed a one-hour maximum it might be one hour for all divisions.

In New Brunswick, the standing orders limit the ringing of division bells to a maximum of five minutes. The Clerk there indicated that members under their standing orders have a duty to attend the service of the House. I guess they take that very seriously and most of them are there. There was consideration by the government in 1978 to try to increase the time for the ringing of the bells because of the closeness and numbers, but the opposition opposed that and they did not proceed with the amendment.

Mr. Chairman: Do they have the whip system in New Brunswick?

Clerk of the Committee: I believe they do.

Mr. Chairman: The maximum is five minutes at all times?

Clerk of the Committee: Yes. In any case, where there is a limit imposed, whether the whips have indicated they are ready to proceed or not, after the maximum time allowed under the standing orders or rules the Speaker will proceed to call the vote.

Mr. Chairman: You will notice in New Brunswick it is not unusual for many members to be away from the Legislature during the session.

Mr. Mancini: I think there is a good reason for that, Mr. Chairman.

Clerk of the Committee: In Prince Edward Island, rule 40(3) provides the bells will be rung for a maximum of five minutes.

Mr. Rotenberg: You could get from anywhere in Prince Edward Island in five minutes it is such a small province.

Mr. Breaugh: You can go from one end of the place to the other in 10 minutes.

Mr. Rotenberg: That is what I mean. You can get to Charlottetown in five minutes from anywhere.

Mr. Chairman: Yes, but if you are on the mainland you could be in trouble.

Clerk of the Committee: They do not call them standing orders; they call them rules. Although the rules provide the maximum of five minutes, the Speaker has, on occasion, extended the five-minute period for people coming in if he felt there were special circumstances that warranted it. Like Newfoundland and Labrador, they do not have the practice of the whips coming in.

In Quebec, there is no time limit imposed on the ringing of the bell, but standing order 107(2) provides that when the President considers that sufficient time has elapsed after the call, he shall put the motion to the vote in accordance with standing order 109. Pierre Duchesne, the assistant secretary, indicated that the usual practice is for the Speaker to wait approximately five minutes before he looks to the whips. If they are standing in their places, he waits; and when the whips are ready to proceed with the vote they sit in their places. That is usually 10 to 15 minutes after the bells have begun to ring.

The President then puts the question. Speaker Vaillancourt has stated that he would not apply the rule in standing order 107, the discretion he is given there. In standing order 107 he has the discretion to call the vote when he feels sufficient time has elapsed. He felt that he would follow the course followed by Speaker Sauvé and wait for an indication from the whips as to when to proceed.

You will also note on page 5, in the last portion of the second paragraph, that the Speaker has said that he would like to see that discretion taken away, that the assembly considered it a proper course to follow, and that he would like a little more guidance in the matter as far as time limits being imposed.

Manitoba has no standing orders providing for the ringing of the division bell; neither does Saskatchewan. Gwen Ronyk, the deputy clerk, says that there, when the whips come in, they do not bow to the Speaker. They tell the Sergeant they are ready to proceed and he shuts off the bells.

Apparently the question, as I indicated before, has been considered by two rules committees, but they decided not to make any recommendations on this matter because there is some opposition about forcing a party to enter a division when it was not ready, especially in a minority position or where the parties are very close in numbers. Also, there is the feeling that the maximum time might become the minimum time.

Alberta has no standing orders relating to the ringing of bells. In British Columbia, standing order 16(2) provides that, "Upon a division being called, the division bell shall be rung forthwith. Not sooner than two nor longer than five minutes thereafter Mr. Speaker shall again state the question..." Then he puts the vote.

There has not been any move to change this standing order even though there is a commission established to review the standing orders. Apparently there is a sometimes a problem where a bell does not ring, so a member does not know that a vote is being taken and may miss that. They are looking at some mechanism whereby a member who is in that situation can have his vote registered on the votes and proceedings. Again, like Mr. Peterson in New Brunswick, Mr. Horne stated that members are bound to attend the service of the House. Most of the members are in attendance when the House is sitting.

Pairing is also used in some jurisdictions as a means of dealing with members who have to be absent from the service of the House. In Quebec, they abolished that in the early 1970s. In British Columbia, they do not use it frequently now because of the members in the opposition and government side.

In the Yukon, standing order 3(2) provides the maximum four-minute bell for a quorum, as our standing order provides. Standing order 7(4) provides that "No sooner than two nor longer than five minutes" after the Speaker has called the members in shall the Speaker put the question. The clerk assistant, Missy Parnell, stated that there really are no problems in applying this standing order.

They have only 16 members in their assembly. The sessions last for approximately five weeks in the spring and four weeks in the fall. Most members, if not all, attend the sessions. The committees are committees of the whole House. The standing committees and special committees sit when the House is not sitting.

In the Northwest Territories there are no provisions for ringing of division bells.

Mr. Rotenberg: That is very interesting. We have two ways of dealing with this across the country. One is a very short time limit, which I do not think we would want to impose upon this House, and the other is basically unlimited. Really what I am saying in my motion is I prefer it to be unlimited, and in order to solve this problem something in the order of eight hours is basically unlimited. We have never gone that long and that certainly is enough time for any whip to get people from just about anywhere in the province. If some whips wanted even longer than eight hours, it would not bother me.

Mr. Breaugh: They have not gone that long for some time but they have gone that long.

Mr. Rotenberg: The point I am making is, no matter what other provinces do, I want to stay on the side of ringing an unlimited bell--unlimited from the point of view that it allows enough time for everybody to get organized, but not in the sense that it go beyond a day, as happened in Ottawa. If we really want to solve our problem we should have it unlimited, so that the time limit is long enough except in the circumstances where somebody is trying to use the bells for other reasons. I don't think any party would object to that.

Mr. Chairman: Mr. Rotenberg moves the standing orders be amended to by adding thereto the following standing order: "Except as provided in standing orders 2, 63, 64, 94 and 95, when the members are called in for a recorded vote the division bells shall ring until the whips return to report to the Speaker that the members are ready to vote, but at no time will they ring for a longer period than eight hours, at which time the Speaker will call for a recorded vote of the members then present, whether or not the whips have returned."

Mr. Rotenberg: I made one change to make it read "the Speaker" instead of "Mr. Speaker" because some day it may be "Madam Speaker." We can't do that sort of thing in our procedures. I don't think we should refer to "Mr. Speaker" in our standing orders any more.

Mr. Chairman: Is there any discussion on this?

Mr. Breaugh: I have had a chance to think a little about this. I think the first important thing is to try to find out what the problem was in Ottawa, what it might be here, and what devices, situations or precedents are different in this Legislature. I think there are some differences which should be noted.

First of all, the technique which was used was a simple adjournment motion and then the whips did not show at the door. Although this is not used in every legislature, it is used in the larger ones. In the smaller legislature with a couple of dozen people, it is more in the context of a county council. Everybody goes to the meeting all day, there are not other committees meeting and you go one or two days a week.

The Ontario Legislature is a little more complicated than that. It has a lot more members, so I think there is some reason for saying that when we have a division of an important nature, we are going to have to provide for some time. It strikes me we have attempted in our standing orders to identify those things which are really just normal business of the House and we are calling in the members from committees or from their offices; and we have identified those areas where that is really the case. What we are dealing with is trying to give somebody some time to get from his office or from a committee room into the Legislature for a vote.

In practical ordering of business terms, I think we have done about as much as we can do. When you look at the Ottawa situation, really the argument was not about anything other than failure of the House leaders to come to an agreement on how some bills should be put before the House. The mechanism that was used there was to get a ruling from the Speaker. The Speaker, in that instance, said that the government proposed legislation was quite in order.

If that were to happen here, we have lots of precedents now which say that, if the Speaker is unsure of whether there is ample precedent. Or, if it is not clear which way the ruling should go, the Speaker may refer it to a committee of all parties, to this committee. We have also set the precedent and maintained it fairly religiously.

10:50 a.m.

Mr. Mancini: Could you give us a couple of examples?

Mr. Breaugh: We have had occasions, for example, on matters of privilege where the Speaker thought, "That is not really clear, so I cannot make that decision on my own; I will refer that to the procedural affairs committee." On Jack Riddell's case, we went through a long hearing process on a privilege matter.

On other occasions individual members of the House have written to a member of the committee, and it has been brought up here that somebody has noted a problem. We have canvassed all of the members and asked them to identify areas where there were problems with the rules. When we have reviewed the rules, we have, on occasion, taken an idea from a member and kicked it around.

If we came to that kind of an impasse in this House, we would have another option that they do not have in Ottawa--that of going to an all-party committee where we could try to get either a rule change or a recommendation to the House that it be done in a certain way. In a number of ways, this committee is operative in a way the federal Parliament is not. It offers an option for resolving problems.

To refer to the rules on divisions listed in this report, I think there are some good things that are translated in different legislatures in different ways. I think it is good to have the whips come in and signify that the parties are ready to vote. The Speaker gets caught in an awful position if he or she calls the vote in the absence of one of the whips. The Speaker is there to represent all members of the Legislature, not a government party, an opposition party or any combination of that. The whips really should be in control of their caucuses, and I believe it is pretty important that the indication is given by the whips that all the parties are prepared to participate in a vote.

If we moved to the kind of suggestion which David has presented and that rule were in place, among the practical problems it presents, obviously not the least of them--say, I wanted to disrupt things, for example--would be for me to put my procedural motion at 10 p.m. and let everybody sit around until 6 a.m. to have the vote. When you did it at 6 a.m., I would do it again; or I might want to wait for question period where opposition parties have a bit of initiative, and as soon as the question period is over with and I have accomplished what I wanted to accomplish, I would move some motion which rings the bells for eight hours.

That would be my concern about anything which identified a length of time; that you are really begging somebody to use that. If you put the rule in that it is eight hours or six hours or 24 hours or whatever, then you are really encouraging them, in my view, by identifying the time period, to come in and push the button on that particular rule.

That is my difficulty with this kind of a motion. If you have really got an impasse at work here and things are not functioning, no requirement of a time limit for bells will work. The only reason why time limits do work is that there is a clear consensus among everybody that this is really just to give the members time to come up from downstairs or back from their offices or something like that. That is my problem with it.

If I had my choice in the thing, I would probably still maintain some concept of letting the Speaker refer the matter to an all-party committee for resolution. That is not an ideal solution, I understand that, but it accomplishes a couple of things which I think are important. First of all, I believe that those deliberations get a little dicey when they are done in secret because then nobody is really accountable. It is pretty hard to tell, as an ordinary member, whether your House leader in secret negotiations really did all of those things; he may not report back to the caucus. It is more than just the House leaders' or the parties' business that is at stake here.

There is that problem with it. I would prefer, I guess, as a first order of business to find some clarification in the standing orders which gives to the Speaker the discretion in a legislative impasse, of calling this committee together in whatever way you wanted to do that, as we would now allow the Speaker to refer a matter out to this committee to deal with.

That would be my first choice. My second choice would probably be not to insert in the standing orders any rule to cover the situation; just leave it alone. We have not had the problem here. There are some precedents you could set. You could say, I suppose, that each day at 10:30 p.m., whether the House is waiting for a vote or not, that day's business is ended and we will come back the next day. There is some indication that a small clarification of the rule would allow the Speaker in this Legislature to do that.

What I thought ridiculous was that the bells rang and the staff and the television crews all stayed around, and somebody had to sit in the Speaker's chair through all of those eight days. It was just crazy. Nonsensical in fact. I would like to avoid that kind of a situation. The bottom line is that I do not think this solves the problems. This kind of a change in standing orders, in my view, would probably create more problems than it resolves.

If we are to do anything, I think Mr. Rotenberg is right, we had better have consensus from everybody. There cannot really be dissent. When we went through the other time limits on bells, if we had stumbled on that problem there, if all members had not agreed that we are really talking about ordering business and it is not a big deal and not a matter of principle, but it is very pragmatic kind of stuff, we would have caused ourselves more problems.

That would be the way I would like to see it dealt with. I am a supporter of the notion that the caucuses have to have a look at it. Mr. Ruston's idea that it be put into a context is pretty important to us. I am not upset at all with the notion that Mr.

Rotenberg has taken the initiative to put this motion before the committee, and I am glad to see he is happy with the idea that we all get some time to think about it, but my initial inclination is that any standing order change of this nature is going to cause more problems than it resolves.

Mr. Chairman: Mr. Piché, are you a delegation of one this morning or would you like to join the committee?

Mr. Piché: I would like certainly to join the committee, but I was made to understand that there was no witness, so I thought I would sit here instead.

Mr. Treleaven: He cannot find his way. He has forgotten his glasses.

Mr. Piché: Would you rather I moved, Mr. Chairman?

Mr. Chairman: I would rather you joined the committee.

Interjections.

Mr. Lane: I looked at Mr. Rotenberg's motion and I listened very closely to what Mr. Breaugh was saying. I think there is a combination of things there that we could do.

I was just wondering, Mike, how would the Speaker contact the committee? At what point would he recognize a crisis? In Ottawa the Speaker was not aware of a crisis when the vote was called. How do you get back in the House to tell the people that you have just called the committee? This is what I am wondering about on your first suggestion there.

Mr. Breaugh: Basically, what I would be saying there is that--and I am not sure we need a rule change to do this--I would just make it clear that in case of an impasse the Speaker has the right to come to this committee, which I assume he has anyway, and that the committee has a right to convene itself. The Speaker then would put that on the committee's agenda so that if there is a big impasse down the hall, the Speaker could probably wait to see what might happen for a few hours; then he could simply ask the clerk of the committee to convene the procedural affairs committee, come and attend before the committee to lay it out and let the committee deal with it.

Mr. Chairman: What could we do?

Mr. Breaugh: The difficulty would be that it is a kind of a technical problem. This committee would normally take a problem like that, write up a report, table it in the House, debate it and the House would vote on it.

Mr. Chairman: Right.

Mr. Breaugh: And with the House not in session we could have a bit of a problem. So the technical problem we would have to deal with is a mechanism. If the Speaker has the right to come before the committee, and I do not think anyone would question that,

and the committee has a right to try to deal with the problem--and some people might question that, but I do not think that would be a big hassle--the crunch would come when the committee decided how to get out of this problem. How do you communicate that?

Mr. Chairman: You have to remember that there is a certain amount of dissension and controversy and there may be a little bit of ill feeling in the House. If a dozen members of the House from all parties come down and sit in this committee, they are not going to completely get rid of that feeling.

Mr. Breaugh: No, you cannot.

Mr. J. M. Johnson: Are you thinking of transferring the Speaker's decision to the chairman of this committee?

Mr. Breaugh: No. What I would be proposing there is essentially that a Speaker's ruling would occur and that he would have to transmit that ruling probably to the whips and to the House leaders. We are giving to him two powers. One he already has, namely, to appear before this committee and place the matter on our agenda; and, secondly, he would have the power to take the results of that deliberation or negotiation or whatever it might be and to then give a ruling on that. That would then give to the Speaker the power to reconvene the House, something that someone like Claude Vaillancourt, for example, is very reluctant to do.

But if a consensus was formed and he was not totally on his own, I would think the Speaker would feel a little more on safe ground to make a ruling in that instance.

11 a.m.

Mr. Lane: Mr. Chairman, just to carry on with Mike's proposal, I assume he is saying that at some point after the bells started to ring the Speaker would decide there was an impasse; he in turn would send it to this committee, and then the business of the House would go on, as I understand it, while we decided what would happen with the impasse. Is that right?

Mr. Chairman: The House would be in session.

Interjection.

Mr. Breaugh: That could be an option. There could be agreement in here, for example, that our first order of business is that we think the House can continue and we will now deal with the matter of how that bill was put together or this procedural point. It strikes me that that would be rather unlikely, quite frankly, if there is a whole lot of animosity.

Interjections.

Mr. Mancini: Can I just interject one comment? If the impasse is as severe as it was in Ottawa, where people will not even take their seats in the House, the House leaders will not talk and everybody is in his office refusing to budge, what makes us think we are going to be able to meet and be able to solve these problems?

Mr. Rotenberg: That's the problem.

Mr. Mancini: If we are in the House battling over what we consider to be an issue so important that we cannot even take our seats, it is kind of foolish to think we can come here and resolve it.

Mr. Breaugh: The only reason I suggested the committee was that in the federal instance, for example, the Conservatives, who had done the procedural deed, then turned around and insisted that they thought it was okay for the committees to sit.

Mr. Mancini: I think that was just a ploy to try to say that the government did not want to sit at the same time.

Mr. Breaugh: I think all they were doing was recognizing that there is a difference between the House in session and committee work and that committee work--

Interjections.

Mr. J. M. Johnson: What is the difference if they do that at that time or we anticipate that it could happen and resolve it now before we have this impasse? Let us assume that at some time in the future, whether it be five or 50 years, it could happen and make the same determination we would make if it happened tomorrow and this committee had to sit to resolve it.

Mr. Charlton: If you recall specifically the federal situation, they reached an impasse in the House, but the House leaders continued to meet and the real impasse did not occur until the House leaders walked away from each other on the second day or halfway through the first day or whenever it was exactly that they decided they were not going to talk any more. There was an impasse in the House, but they were still prepared to talk. There is no reason why, if that is an understood route around this place, when the Speaker sees the impasse he cannot come and ask this committee to consider the procedural questions. One of the problems of having the House leaders deal with a situation like that, as they did in Ottawa, is that they were all dealing with it much more from a heavily weighted political perspective than from a procedural perspective.

Mr. Rotenberg: Probably you are never going to reach this impasse unless you are in a major political hassle. With all due respect for what Mike says, if the House leaders and the leadership of the three parties--not just the House leaders but the party leaders--are at an impasse, as they were in Ottawa, I am not going to come into this committee as a member of my party when my House leader and my party leader, whether I am in opposition or in government, are out there saying, "As a great matter of principle we are not going to do this, but we are going to do that." How in heaven's name can a dozen of us come into this committee, with our party leaders taking a very strong, firm stand, and negotiate? That is what you are asking us to do.

You say it was a matter of an interpretation possibly of whether that bill was right or wrong. But how could any member of this committee in open session--and in that situation we had such a strong political problem--take a stand different from that of his party leadership?

Mr. Chairman: As pure as we are.

Mr. Rotenberg: As pure as we are, we are not going to solve that impasse. Each of us is going to go and talk to our leadership. I certainly would not come into this committee, as a member of this committee in that situation in Ottawa--I am just sort of putting myself into that context--and do anything different from what my party leader or my House leader and so on had said to me. If it is possible to remove the impasse within the context of this committee, it can be solved without this committee.

Mr. Charlton: It is just a question of time, though.

Mr. Rotenberg: No, it is not a question--

Mr. Charlton: Sure it is.

Mr. Breaugh: It is more than that.

Interjection.

Mr. Breaugh: What Mr. Johnson was pointing out is that this is what we are dealing with. It is precisely what he said. This committee, if it had an obligation to do that, would meet and respond. For example, ironically enough, this matter was brought before the committee precisely by the technique I am suggesting. The Speaker came in and asked, "What happens if that takes place here?" The matter is here, so there are lots of precedent for that. The trick would be that you would have it clear now that in a situation like that an obligation is on this committee to meet and deal with the problem.

The reason I am going back to a standing committee is that the House leaders, the party leaders and the parties have their own axes to grind. What we are trying to constitute here are ordinary members because if the House is not in session, as an ordinary member--not as a politician of the NDP--I am losing some of my privileges. I do not have the right to go in there and raise problems about layoffs in Oshawa. I am denied that forum, and that is what the election is all about: to get me into that forum. So as an individual member, never mind as a party person or a member of caucus, I am losing quite a bit when my party leadership says, "We have got big deals on here."

The only suggestion I can come up with is to say now that if things like that are going to happen we are going to say in the absence of fire and furore that we have a committee and we are going to lay the responsibility on that committee. You could never get away with this in the middle of a battle; you could put all of us in your pocket.

Mr. Rotenberg: Let me put it this way. The thing in Ottawa was really precipitated because there was an argument over procedure, because Madam Speaker ruled that a bill was in order and the Tories thought it was not in order. She made a ruling, and instead of appealing the ruling they went out to try to negotiate it.

But it is not always just a matter of procedure that could precipitate this. Let us look at another situation. Let's talk about when we had the Suncor problem last fall, let's say. The opposition parties wanted certain information that they thought the government should give them, and the government said there was no more information and so on. There was a bit of an impasse, and there were a few tricks played by both sides. I do not want to point any fingers and get political about it.

But let us say that one day the opposition parties came in and said, "We want this information," and then someone moved an adjournment motion and said, "We are not coming back until the government gives us the information." There is nothing procedural about that. The two opposition parties--and I feel like that--could have come up with nothing in procedure; therefore, there was nothing this committee could do, nothing this committee has any jurisdiction over, and there could be an impasse based not on procedure but on something like the government's refusing to give information. In that kind of impasse your scenario really has no validity because this committee cannot come in and order the government to do something.

It is not procedure. In that situation I think also you have to have a mechanism for getting back into the House and letting the opposition do their thing. Your scenario does not handle that position at all because, as I say, there could be many other reasons why a party might want to boycott a vote other than just a procedural hassle.

Mr. Breaugh: That is precisely the argument for having no rule and no accommodation, that an assembly like this one is a political animal, and in a political term I probably do not want a solution, I do not want something that puts me back in there. Certainly as somebody who sits on this committee, in political terms I am really giving up a great deal when I offer to mediate this kind of dispute. I am really saying that 12 or 13 of us are going to come in here and try to resolve the problem. If you look at the procedural side of it that may be reasonable, but if you look at the political side of it, that is quite a risk for us to take. I would rather have the Speaker say something or make a ruling that I disagreed with violently; it would give me lots more ammunition. Or I would rather have the government force closure, or I would rather have a lot of other political options open.

I am not jumping up and down that I really want this committee to get this kind of stuff, but I am saying that if you want to deal with it in a procedural manner that is a technique that might work. If we are talking politics, on the other hand, this good old crass political process, probably the truth is that neither the Liberals nor the Tories in that federal argument wanted a solution of any

kind. Both were quite content to have their House leaders do all the press conferences in the hall and all of that. We have to make those distinctions.

Mr. Epp: I was going to speak on a different point, but I will mention the fact that I do not think this particular committee can resolve the problem. I really do not.

Mr. Chairman: I think we should have some contribution by way of a resolution, some seed to get the thing into the various caucuses and discussed and, I hope, back here with a recommendation.

Mr. Epp: I think we can discuss it, but in the final analysis I think that if there is a very important political argument which somebody wants to make you can put all the rules you want in the rule book and people will not abide by them. As far as they were concerned in Ottawa, the rules were that they were supposed to have a vote and nobody went in for the vote.

11:10 a.m.

Mr. Chairman: We can solve that by changing the standing orders.

Mr. Epp: I do not think you can.

Mr. Breaugh: That is the other point. You want to write a standing order for an incident or an occasion that has happened once in the history of Canadian politics. Is that rational?

Interjections.

Mr. Epp: As far as I am concerned, I would just leave it the way it is. We can take it to the caucuses and try to work with it and argue in here how we are going to resolve things in the House, but in the final analysis I think you can put any rule in there you want and if people do not want to abide by it they will not or they will find some other way out.

Mr. Charlton: Mr. Chairman, on this discussion we have just been having, it seems to me we are forgetting one thing a little bit. Mike is right. In the political context in a situation like the one in Ottawa the House leaders were scoring their political points, or so they thought. They were attempting to; whether they actually did or not is somewhat debatable. What we are forgetting in that whole scenario is that for political reasons they do not want to solve it in the meetings with each other because they have taken their public positions and they will look as if they are backing down if they find the solution too quickly.

Everybody in reality was looking for a solution; everybody was looking for somebody to solve it so that nobody had to back off from that instant response outside the House right after the situation started where the Tory House leader said, "You have got to change it," and the Liberal House leader said, "We ain't gonna." There was a hard-line position, and they cannot lose face in the political arena. They were in fact looking for somebody else to sit down and work out that solution for them so they would not have to do any

personal backing down. That is one of the realities of how things work in the political arena which you have to think about in terms of Mike's suggestion.

Mr. Rotenberg: Mr. Chairman, two weeks ago there seemed to be a consensus in this committee that we wanted to solve the problem so that what happened in Ottawa could not happen here in the unlikely event somebody did it, and to try to solve that problem at a time when we did not have the problem. Now there seems to be no consensus that we want to solve the problem. In other words, if there seems to be a feeling we should leave it alone and hope it never happens or that when it happens we will deal with it at the time, that is all well and good.

Just on Brian's point, I agree that they did not want to solve the problem, but if they had to come back into the House after a period of hours maybe something else would have happened. I do not know. We had a feeling here two weeks ago that we wanted at least to make sure that they got back into the House and took a vote and that they could not hold up procedures for two weeks. If from a political point of view the members of the committee feel that they want to keep the right they have now to hold the Parliament up forever on a vote, for whatever political reason, and if there is no consensus in solving the problem then, of course, you're not going to solve the problem.

I can understand that point of view, but I think, as I said, that at the end of the discussion, if we have reached the end of the discussion, I would move that this matter be tabled and referred to the caucuses and be brought back on the agenda at the discretion of the chair.

Mr. Chairman: As chairman, I would like to make a suggestion that may not be very popular with you. I was wondering if, in the seventh line after the phrase "no time will they ring for a longer period than eight hours," we could add there, "and under no circumstances later than 10:30 p.m. of the day the division bells commenced to ring."

Mr. Rotenberg: Oh no, Mr. Chairman. One of the points that Mike made is that business automatically ends at 10:30. You can call a vote at 10 o'clock, and then if the thing ends at 10:30 then the motion is lost and that would be a tactic. Bells do sometimes start to ring on an unlimited bell at five after 10 or 10 o'clock.

Mr. J. M. Johnson: At the present time we have votes after 10:30.

Mr. Rotenberg: In effect, the clock stops when the whips come in. You can start a vote at 10 o'clock, and if the whips do not come in until two in the morning that is when we take the vote. The House does not adjourn. I think the Clerk of the House made this clear two weeks ago. If you put in an automatic stopping of the bells at 10:30 that becomes a limited bell, and that would be something I do not think we should ever try to do. That would defeat the whole purpose of an unlimited bell.

Mr. Chairman: Does the House not automatically adjourn at 10:30?

Mr. Rotenberg: Not if the bells are ringing. If the bells are ringing they continue, they take the vote and then the House adjourns.

Mr. Breaugh: That is not clear. In this Legislature with our standing orders a possibility would be for the Speaker to resume the chair on the first day at 10:30 and say: "It is now 10:30. This House stands adjourned." That has never been done.

Mr. Rotenberg: I think Mr. Lewis made it clear when he was here two weeks ago that that would not happen.

Mr. Breaugh: The problem is that Mr. Lewis does not occupy the chair.

Mr. Rotenberg: No, but he indicated that that is what the rules are. He is our interpreter of the rules.

Interjection.

Mr. Breaugh: Let me put another option to you. I think we have kicked this around a lot. David has put forward one option of a change in standing orders. Let me put another option before you and then perhaps we can table it and go back to the caucuses. Another option, in my view, would be not to write the standing order but to offer to the Speaker something which might be akin to a ruling of what the Speaker might do in a given situation. That might include something like saying that we would accept the notion that the Speaker could occupy the chair at 10:30 and adjourn the House. That at least solves the problem of staff staying around all night and somebody having to sit in the chair in an empty chamber for eight days, all that kind of stuff.

Secondly, we would have to offer some guidance about whether the next day, at two o'clock or 10 o'clock, the Speaker could try again to see whether they were ready, whether he would occupy the chair, or whatever. Then you might suggest that it would be a precedent in this House that the Speaker has a right to visit a committee and ask them to deal with the matter, such as he has done here, and that we offer guidance to the Speaker so that he would have a mechanism for calling the House back into session and making what would, I guess, constitute a ruling. Then members would abide by that. The second option does not change the standing order. The second option only provides some guidance to the Speaker which he or she may or may not use.

Those would be the two options that I would see: David's, which is a written rule, a standing order, and mine, which would be some precedent which we would attempt to work out to offer some guidance to the Speaker which he could use.

Mr. Rotenberg: There is no way the Speaker can call people in when the bells are ringing.

Mr. Breaugh: That is what I am saying. We would attempt to work out a precedent which the Speaker would then translate into a ruling, but it does not go into the standing orders.

Mr. Rotenberg: In the Ottawa situation, if the Speaker had called the members in for a vote she would have been accused of breaking the rules.

Mr. Breaugh: Technically what I am saying, David, is that we have put in our standing orders--not everybody has them--that the House adjourns at a certain hour and starts up at a certain hour. We would be saying that our version of a precedent for this kind of a problem would be that the 10:30 rule applies; that the Speaker can occupy the chair at 10:30 and adjourn the business for the day, and that we would have the opportunity the next day at two or at 10 to call the House.

Mr. Rotenberg: And just let the bells keep ringing.

Mr. Breaugh: I am saying we would be establishing a precedent that the Speaker has the right to call the House in session.

Mr. Rotenberg: What happens to the vote that we are in the middle of taking?

Mr. Breaugh: That is what I am saying. The bells would stop, the Speaker could assume the chair and could try again.

Mr. Rotenberg: Try again with what? Would you be continuing from where you were, with the bells ringing and the motion on the floor?

Mr. Breaugh: The problem could occur again; there is no question about that. I would not suggest for a minute that it would be wise for the Speaker to adjourn at 10:30 and crank it up at two the next day unless some accommodation had been found. Technically, we are giving the Speaker discretion, which he may or may not have now, of ending at 10:30 and starting at two or 10.

Mr. Watson: Mr. Chairman, I want to say something which really ties in very well with what Mr. Breaugh has been saying. I do not like these numbers, but I think technically we have got to find a way of turning the bells off and sending the staff home if the situation were to arise here. In Ottawa the Speaker used her discretion to turn off all but one bell, and I do not think anybody complained about that.

I would like to see something, if you want to put it in the standing orders, that would give the Speaker discretion to turn off the bells after a certain length of time. I am not mentioning time, but say we put in that after a limit of one hour after normal adjournment, in the opinion of the Speaker an impasse has been reached and that he can adjourn until normal starting time the next day, or until the orders of the day for next day. We might have to go through the question period and I can visualize all kinds of scenarios on that--the opposition asking for questions and the cabinet minister standing up and saying he will give no answer until we resolve the other.

I favour some of the things that David said.

Mr. Chairman: You are worried about the mechanical nuisance of ringing bells.

11:20 a.m.

Mr. Watson: I am concerned about the mechanical nuisance of ringing bells all night and all weekend and having staff on hand and having people around theoretically ready. I think that that part of it is silly. It is a technical aspect of it; it does not solve the political things that Mike has been referring to, and I agree with him that there are the two sides. But surely we can give the Speaker some discretion, by guidelines or by a standing order, to say: "Listen, we have had an impasse today. Let's have a break and go back at the impasse tomorrow. If you want to we will try to solve--

Mr. Chairman: What do you mean? Ring the bells again at two o'clock the following day?

Mr. Watson: I am not saying that they should automatically come on. I am simply suggesting that if the Speaker says there is an impasse, he may turn off the division bells and we may give him the authority to call the House leaders or to go to this committee--to do something. But let's not, just from the purely technical point of view, have so many people, Hansard and the clerks and everybody else, sitting waiting. That is silly.

Mr. Chairman: That is part of the pressure. If you are involved in any negotiations or arbitration or what have you, there has to be some pressure.

Mr. Breaugh: That is really what the second option is. The second option is saying that we are trying to establish some kind of mediation-arbitration system. For example, in the federal thing, one which we have not discussed is that the government, that is to say, Mr. Trudeau and his cabinet, had an option which they chose not to use, that is, to dissolve Parliament and call an election, or to say "This session of the Parliament is dissolved; we will go away for six or eight weeks and come back and try again." Those are options which were available to the government and they chose not to use them.

Mr. Chairman: I am convinced that because the situation became rather ludicrous, that the ringing of this bell--of which the media made a great deal--and somebody sitting in a chair in an empty chamber, the whole situation encouraged the whips and the House leaders to get together on some final compromise and an agreement. But if you have it too easy, no noise and everybody has gone home, how the hell do you get everybody back again?

Mr. Breaugh: That is it. If you are going to do that, then there must be a mechanism to deal with the problem and that mechanism has to be agreed upon. In Ottawa the thing that stopped the bells were two guys appearing at the door. I thought it was interesting as I watched it, that when the impasse was resolved, not all three whips appeared at the door, only two.

Mr. Rotenberg: They only had the two whips come in.

Mr. Breaugh: That is the difference from our House where we say all party whips must be there. Ottawa says the government whip and the chief opposition whip will be there.

Mr. Rotenberg: That is a minor point.

Mr. J. M. Johnson: I would like to make a suggestion to this committee that either we agree we should discuss this and try to resolve it at the present time or we forget about ever dealing with it. There is no point in trying to have this committee sit and resolve something when it happens. We should look at it now, anticipate that it may happen and make a determination as to how to resolve it while we are not in the heat of battle. Failing that, I think we should stay out of it. There is no point in suggesting that the Speaker to come to us after it has happened. That is too late. We should try to resolve it now.

I suggest that we try to come up with some mechanism for resolving it. If we do come up with something we feel is satisfactory to this committee, then it could be referred to the House and be debated there. All members would have an opportunity to participate. If it passes at that level, we would have a mechanism in place that could solve the problem.

If we cannot agree to that now or when it is debated in the House, then we do not have to worry about it. When it does happen we can let nature take its course. My suggestion is that we try to see if we can reach some consensus among the three parties in this committee and then carry it on to the next level.

Mr. Rotenberg: I agree with you. I think at this stage we should defer this for a couple of weeks. Let the members go back and consult with whomever they want to consult with in their own parties. I do not think the members of this committee on their own should make that decision without some consultation. Mr. Ruston has indicated he wants to consult his caucus.

Mr. J. M. Johnson: I am thinking of the possibility of not even coming to any conclusion. It might be next fall before we do, but at least let us work towards it.

Mr. Rotenberg: I am suggesting we now table the matter and that it be brought back on the agenda at the discretion of the chairman, and he will do that when he has some indication from the three parties that they want to discuss it again at this committee stage.

Mr. Chairman: Then you are not prepared to vote on this motion?

Mr. Rotenberg: No. There is no point on voting on this motion this morning. I think I indicated at the beginning that the motion is here for discussion purposes. We have, in any case, to hear from the Liberal whip and I get the impression from Mr. Breaugh that he might want to have some more discussion with his caucus. As I said at the beginning, Mr. Chairman, there is no point in having a thing like this go through this committee on a split vote. Unless we

get a consensus on a matter as important as this, we should not push it. I am not speaking for my party, but my own advice to the party leadership would be we should not push this kind of thing through if the opposition is opposed. I think we should table this now and when the three parties indicate to you they are ready to discuss it again, you can put it back on the agenda.

Mr. Chairman: That is the problem. You table something and it dies; it is buried unless somebody brings it back.

Mr. Rotenberg: I will bring it back.

Mr. Chairman: Why do we not in some way amend your motion to the effect that the following resolution be considered by the three caucuses of the Legislature who will report back to this committee?

Mr. Rotenberg: That is the effect of my motion, Mr. Chairman. If you want to put it in a more formal way I don't object.

Mr. Chairman: I would like to see us pass a motion and the clerk take it from there and advise the House leaders and caucus chairmen, so that there is some form of encouragement for the caucuses to discuss it and let us have their opinion.

Mr. Rotenberg: I have no objection to that, Mr. Chairman.

Mr. Chairman: Mr. Breaugh moves that the members of the committee return to their caucuses with three options. One is the proposed standing order which Mr. Rotenberg has put before the committee. The second is that the committee would attempt to formulate a report which would be accepted as precedent, and that means essentially we would work out how we would deal with this. We would put it all in a report, we would table it in the House, the House would have a vote on it, and that would have, not the same status as the standing order, but we would have tried to deal with it. The third option would be no action and that we bring that matter back on the committee's agenda in six week's time.

Mr. Rotenberg: That is exactly what I meant to move.

Motion agreed to.

Mr. Chairman: I will assume that the motion Mr. Rotenberg made is part of the overall motion just made by Mr. Breaugh.

Mr. Breaugh: I think it would be of some assistance if the clerk could take the words I just recorded in Hansard and give us a one-page sheet which says there are three options and that we are going to report back in six week's time.

Clerk of the Committee: Do you want me to go to the whips with this?

Mr. Breaugh: Yes. I think technically it would be a nice thing to send copies of those three options to the whips, the House leaders and the caucus chairmen.

Mr. Chairman: And a copy of the resolution appends a copy of the options, right?

Mr. Breaugh: Yes.

Mr. Epp: And a copy of what the different legislatures do.

Mr. Chairman: Yes, a copy of the memorandum of the clerk of the committee.

We will deal now, gentlemen, with the report on agencies, boards and commission.

The committee continued in camera at 11:28 a.m.

CANON
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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

SUPPLY: COMMITTEE SYSTEM
QUESTION PERIOD

THURSDAY, APRIL 15, 1982



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
Piché, R. L. (Cochrane North PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Also taking part:

Martel, E. W. (Sudbury East NDP)
Nixon, R. F. (Brant-Oxford-Norfolk L)
Robinson, A. M. (Scarborough-Ellesmere PC)
Wells, Hon. T. L., Minister of Intergovernmental Affairs
(Scarborough North PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher

LEGISLATURE OF ONTARIO
STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, April 15, 1982

The committee met at 9:50 a.m. in room 228.

SUPPLY: COMMITTEE SYSTEM

Mr. Chairman: I guess we see a quorum. Review of procedures relating to supply and to the committee system. We have three illustrious people here this morning: the Honourable Mr. Wells--I thought you were in Ottawa.

Hon. Mr. Wells: Obviously not. I'm here now.

Mr. Chairman: Robert Nixon and Elie Martel.

Interjections.

Mr. Chairman: I think you all have a copy of John Eichmanis's memorandum on the consideration and revision of the estimates process. Is that right? You all have a copy of that.

Mr. Nixon: Yes. Very well prepared.

Mr. Chairman: I think you were all here before, either individually or collectively, to discuss this subject. The committee has discussed it almost ad nauseam. When Mr. Breaugh was chairman of this committee we had a report that was filed and tabled in the Legislature and is still to be debated dealing with this subject, or at least touching on this subject. I just think that if there are going to be any changes or revisions of the process we should make up our minds, probably, during the current session of the Legislature and while this committee is sitting.

Tom, do you have any comments on the memorandum? Is there anything you would like to add to it or object to or agree with that might help us?

Hon. Mr. Wells: The only thing I would add, Mr. Chairman, is that at the minute this is the kind of thing we have not really reviewed with our caucus or anyone else, so I cannot give you anything but my own personal views--

Mr. Chairman: That's right.

Hon. Mr. Wells: --which may or may not be the views I would put forward on behalf of our party.

I think we are certainly in favour of some kind of streamlining of the estimates procedure, although when you really deeply think about it you come to the conclusion that things are perhaps not as bad as sometimes we all think they are. In other words, we do get the estimates done under the present rules and we do have free-ranging discussions on government policies.

Notwithstanding some of the thoughts put forward that we will not get them done in time and that there is not time and that we will have to sit at unusual times, we always seem to end up somehow, through accommodation, I guess, getting them done.

What we are really talking about when you get down to this kind of procedure is that you probably have a hard job separating it from a look at how all the committees work, because if you start to adopt a procedure like this in an estimates committee and in other functions for the other committees you are into the whole business of committees and you have to look back at Mike's report and so forth to see if there are some things in there.

The one that comes to my mind is striking separate committees for each bill which is sent out, rather than sending them to any set committee. Was that not one of your recommendations? You have to think about whether those kind of ideas, perhaps, are--

Mr. Chairman: That was a private bills committee, wasn't it?

Hon. Mr. Wells: There was a private bills committee, but I think it is suggested that rather than send bills to a committee you strike a committee if a bill was being sent out; you name a chairman and members of the committee for each bill rather than send them out. That was one of the suggestions, and I recall that being made.

All I am saying is that I think you have to look at those things too. If we are looking at a totally new sort of committee and committee procedure it may be difficult to do it by just changing one part of the committee structure.

I think that is all I can add at this minute. I would just like to hear the discussion.

Mr. Chairman: Just a couple of points touching on the criticism of the present system. First of all, for most of the people who attend estimates at an estimates committee meeting, whether it is their own particular standing committee or resources or justice or whatever looking after estimates, it is a relatively boring process, particularly for government members, because they do not really talk very much about dollars and cents. Whether that is the committee members' fault or whether it is the structure I do not know.

Second, it seems ludicrous that on November 21 or December 8 you were talking about the estimates of a ministry, half to three quarters of which has already been spent, let alone approved. In other words, how can we improve the timing of it? Why cannot estimates be finished by the end of June, for example, and things of that nature?

And also, the opportunity to deal, probably, with some pre-budget financing, some real estimates--in other words, what is down the road for a particular ministry before the budget itself is introduced in the Legislature. Is there a possibility of talking, via a white paper or something, about the plans of the ministry to spend X number of dollars in a certain area or under a certain

responsibility before it is actually approved by the Legislature after introduction by the Treasurer? Things of that nature may not take that much structural or procedural change to make those improvements.

Mike, you can correct me, but the main remedy being proposed is a committee to deal strictly with the money matters and then the setting up of some sort of policy committee to discuss the annual report, or what have you, of a particular ministry. That is the feeling I am getting and, as you know, Tom--I imagine you get your estimates through in about 24 hours--

Hon. Mr. Wells: No.

Mr. Chairman: But, as you know, this has been a long-standing complaint about most ministers, the fact that estimates seem to take unnecessarily long. They are partly to blame with their 40, 45 and 60-minute statements and then they get the same back from the two opposition representatives, who give long statements of policy. I realize you cannot entirely separate financing from policy; they are intertwined, but--

Mr. Nixon: What is the recommendation?

Mr. Chairman: I think the crux of the recommendation, the basis of it, is right here in the previous report of this committee. But I would just like to hear what objections you have to some of the suggestions in this memorandum and to the previous report. What are the objections?

Mr. Martel: Let me just pick up on a point you made, Mr. Chairman--

Mr. Nixon: What's going on here?

Mr. Martel: I put my hand up.

Mr. Nixon: Oh, pardon me.

Interjection: You want to rotate that way?

Interjections.

Mr. Martel: Be my guest.

Mr. Nixon: No, I don't care, but when you started with the government House leader I thought--

Interjection: Go ahead.

Mr. Nixon: --and then you were not going to be speaking.

Interjection: I thought you were a member of this committee.

Mr. Nixon: No.

Interjection: Get the hell down there below me.

Mr. Nixon: Listen, I waited for 20 minutes for you and now I have been listening to you for 10 minutes. It is very good, but if you want the representative of the NDP to speak I cannot wait to hear him.

Mr. Chairman: Mr. Martel, do you want to yield to Mr. Nixon? Carry on, Robert.

10 a.m.

Mr. Nixon: This is the second time we have been asked to come to the committee to express our views on the proposals to reform the general committee system and I thought we had a pretty good discussion about it the last time. I think there was more or less reasonable agreement from the three House leaders that we would be willing to try some alternatives. Some of them actually, I thought, were very good indeed; the idea, for example, of a special committee dealing with each individual bill that requires committee review particularly appeals to me.

To be frank, the committee system now is not working badly. The main objections are the ones that have been expressed both by the government House leader and by the chairman of the committee, probably more from government members and Progressive Conservative members than anyone else, although certainly my Liberal colleagues find the procedure arduous and long drawn out.

I appreciate the chairman's comment that the blame has to be shared, because I certainly go into the committees as an interested member myself and also as House leader to hear what is going on, and in many instances the minister will read--I know in one instance not many weeks ago there was a 65-page statement. The spokesman for the official opposition read a statement prepared by him or her, as the case might have been, with the assistance of our elaborate and competent research facility; and the spokesman for the NDP also read a lengthy statement, just as interesting and just as apropos as the first two, which took the first two days. It generally cast a pall on the whole discussion so everybody realized that we are just going to have to wade through these 15 hours or whatever it is.

Actually, if the discussion had been restricted only to dollars and cents it might have been even worse because, while there is a general impression among opposition members that if we only had enough assistance and research to dig out all the facts we would find something perhaps more productive than we have in the past, there is really nothing but a general feeling to indicate that this is in fact the case.

The one thing I am concerned about in the specific recommendation that was précised by Mr. Eichmanis is the crashing boredom of the assignment, particularly when one of his recommendations is that substitution not be permitted and the same members work on that committee for the life of a parliament. Honestly, it would make the regulations committee look like positive action film fun time. I am concerned that the barebones recommendation from the procedural affairs committee, when I look at it, is really an assignment that I would hesitate to ask a colleague to take on.

Mr. Chairman: That's a four-year sentence, isn't it?

Mr. Nixon: Yes. So, specifically, I could not recommend to my colleagues that there be no substitution and I do not like the small size. He has an alternative of committee size. I certainly do not think any committee ought to have fewer than two members from a political party, particularly if there is any thought of restricting substitution, which I personally would oppose.

I have even felt on this committee, where at one time we made quite a concerted commitment that the membership would be maintained through the life of a parliament and substitution would either be restricted or stopped, that that really is not practical; and in some instances, from my point of view as House leader, it is not even a good thing. I think it is much better to rotate the possibilities as the emphasis changes to some extent.

I have some specific comments to make. I would say that I am generally in favour of an attempt to try the general recommendations that came from the committee previously, which are still before the committee, the general recommendations for committee reform. Some of them I found very attractive. I would agree that our present method of dealing with estimates is time-consuming and largely irrelevant, and if we can improve it then we should.

The more I think of winnowing out the policy matters from the actual dollars, however, the less practical I think that is. The more I have thought about it the more I have felt that our present system is working surprisingly well with the sort of co-operation we get among the three parties. We do not fill all of the hour requirements or allocations, although that is possible to do if one particular area of review takes on some special concern, political or otherwise.

I think our own experience is that even under our present method of estimates review, debate can become extremely interesting and effective politically and in the best sense--in one instance two or three years ago in the Agriculture and Food debate, leading to a royal commission. Whether or not that is a good thing, at least it actually did have an effect; it impinged on government policy.

I think probably the most notable cases where this comes to my mind were when Stephen Lewis, as leader, would on occasion use the estimates committee rather than the House as a vehicle to bring forward a specific policy matter. It really was effective because he had the minister here with his officials and members of other parties, and the discussion took on quite a dramatic point and was seen to have that added performance.

For a number of reasons that may or may not be obvious, that does not happen too often, but still it is an indication of what can be done when, on a political basis, emphasis wants to be given by a party or an individual who has something significant to say on a new topic. The direct give-and-take between the member and the minister is, in my view, extremely effective.

I have already made some comments about my views on set-piece presentations at committee. I believe one of the reasons we wanted to put the estimates out to a committee was that we would try to avoid, if at all possible, the reading of extensive preprepared screeds on whatever happens to be in the mind of the presenter. You cannot abolish that. The rules of the House--and we have amended them--always used to say, by tradition, you cannot read speeches, the idea being that unless you are talking about formal government policy you should be expressing a view as an elected member and not depending more and more on the views that other people prepare for you. Naturally, that does not mean that extensive research is not valuable and so on, but we really ought to try to get away from that, I believe, as much as possible.

I am very much struck by one comment the chairman made this morning. It was implicit in the larger report, the committee report--let's call it the Breaugh report--and that is I hope we are gradually going to move away from the position where the budget is brought down, like a fiat, from the top of the mount. The recent instance in Ottawa is a classic case and may do more for the reform of budget-making procedure than anything that has happened in the last century, but really the same thing is happening now.

The Treasurer (Mr. F. S. Miller) has not announced a budget date, as far as I know. He has indicated to the House a number of times that he is consulting with a number of people. I do not know how he consults with the elected members of the Legislature. We have an opportunity, I suppose, during the debate on the throne motion to express our views as to what the policy might be, but nobody listens to that, as you know. It might very well be that a white paper before the budget, or a finance committee--as the possibility is suggested in the paper here--might, if the responsibility is not given to them by the Treasurer, take it on themselves to say this is what we are looking for in the budget. It could be extremely effective.

It would be even more effective if the Treasurer would have the nerve--courage would be a better word--to participate in the thing, argue back and forth, so that as a prebudgetary exercise there would be the possibility of substantial and significant input from members of the Legislature. That may be too naive to consider seriously, but I think the chairman, who raised the subject, has shown some interest in it and it is something I would certainly like to see attempted. My general prejudice is for an attempt to introduce and use the changes that were recommended by the committee when it was chaired by Mr. Breaugh and that it be carried on under the present chairmanship.

10:10 a.m.

There are a number of things I would like to refer to--and I know the representative of the NDP is anxious to express his views--and this whole thing of dealing with supply days in the House is one of them. Ottawa has done that for some time and I have a feeling we are going to go that direction.

Also, more and more we find a motion that we should set aside the ordinary business to debate a matter of public importance. I find that not as satisfactory as it should be because, for one thing, it does not end in a vote, and from our traditions around here something with a vote, essentially no-confidence although not necessarily couched in those terms, gives point to a debate, even to the extent, and I hesitate to mention this, that it keeps the debaters around after they have made their own speech so that they can be there to participate in a division in the House at the end. It gives point to it.

I think we should remember, however, that most of our no-confidence debates or budgetary debates in the more distant past were amendments to the motion put in the House that the House do now resolve itself into a committee of supply. It was tradition at that point that an opposition member could get up, usually by agreement but in the old days not always, and move an amendment to the motion, which would mean that the House could debate what essentially was a no-confidence motion on supply. The government would carry the motion, eventually--if they did not they were in trouble--and the committee of supply would proceed with its work along a certain line. That, in my opinion, was more or less the traditional parliamentary approach to no-confidence motions based on supply.

I am a little concerned that the memorandum Mr. Eichmanis prepared does not emphasize where the budgetary discussions can take place. It clearly puts forward the proposal, in the broader committee recommendations, for a finance committee or an estimates committee which, frankly, I would like to try. I can see certain pitfalls in it, just as in the general recommendations there are obvious problems to be worked out.

I suppose the reason nothing has gone forward in this is basically what the government House leader has said, that we are reasonably well satisfied and that the opposition members do not feel they lack reasonable opportunity to discuss matters over a full session of the Legislature in each ministerial department. I do think we could make it somewhat more effective and I, for one, would like to try the alternative put forward by the committee.

Mr. Martel: I have a number of things I want to pick up on. I think, Mr. Chairman, you put your finger on what is really the nub of the problem, and that is the role of the private member. It is probably more devastating to the Conservative members than it is to the opposition members because at least we can get up and maul the government and take some pleasure in it. But, at the same time--speaking for myself and not for my party--I am not sure any of us feel we are accomplishing a hell of a lot or that we have much input in what goes on in society, or that we have any input in getting any change.

Very few cabinet ministers have ever been willing--except under the minority government, which I found probably the most interesting six years I have been here. There was consultation and it bloody well worked and worked well. It worked without half the rancour we have had in the past year because I think people felt they had some input, and that included opposition members.

I suspect there was probably more consultation with the government back-benchers at that time than there is when you have a majority and just pull a Suncor. So the back-benchers are looking for a meaningful role, as one of the new members told me, not just putting up his hand like a trained seal when he is told, which he finds very offensive.

Mr. Chairman: What was that member's name, Mr. Martel?

Mr. Martel: I am not prepared to give you that back-bencher's name.

Mr. Chairman: That is like "a reliable source."

Mr. Martel: I sat on the last committee that tried to change the rules and we attempted to bring in some role for the back-bencher. I know I am off topic for a moment, but we brought in a recommendation which led to a private members' hour with some meaning. That is slowly but surely being killed; it becomes more useless. In our caucus there is no discussion of how we are going to vote in a private members' hour.

Mr. Nixon: It is the Tories who divide on it.

Mr. Martel: It is precisely what it is meant to be, a private members' hour.

Mr. Nixon: But you always agree, the Tories divide.

Mr. Martel: I can understand the government--

Mr. Chairman: You fellows are so dogmatic.

Mr. Martel: I will finish my remarks and then you can comment on them.

I would be the first to say that if it was in opposition to government policy I would expect the government to vote against it. At the same time, we are even blocking resolutions from coming to a vote, which is total insanity because resolutions do not even have to be acted upon. Why go into a formal structure of debating? You might as well cancel the private members' hour if that is going to continue. Somewhere down the road both sides are going to play the game. People are simply going to prevent a vote from coming via the guillotine.

The only point I am trying to make is that that was an attempt to give back-benchers a more meaningful role. My opinion is now in danger of going down the tube because everything is blocked. It is simply crazy. One has to consider that in England all the divorce legislation, all the abortion legislation and so on, came through back-benchers, through private members. It did not come through the government. I think the only bill that ever got through here was Jack Johnson's. That was early in the game, on advertising in newspapers, I guess.

Mr. Lane: There was Mr. Breithaupt's.

Mr. Martel: So there were two in five years. We have a tremendous success rate. We had Monty Davidson's killed by the government and introduced by the Attorney General some two weeks later. It is just total insanity that that would occur.

This leads me to the next problem. Those of us who were in England saw that back-benchers there took a role somewhat different from that of government members here. I am not just talking about Ontario when I say government members, or supporters of the government in Canada per se, very seldom criticize or attempt to get into the estimates. I suppose it is for fear of being seen to be critical of the government that there is a reluctance to take a role.

There were opportunities in the past session for government members to have a role. The two opposition parties sent some seven reports to committee to have certain items looked into--one of them was Suncor; I do not deny that--but what happened was that the instructions went out ahead of time that none of these things was to be looked at and none was, except perhaps--Did you get around to the election expenses last summer? I suspect not, although there was--

Hon. Mr. Wells: It is this summer.

Mr. Martel: This summer? Pardon me.

Mr. Chairman: What is the point you are trying to make?

Mr. Martel: The point I am trying to make is that avenues were opened but are being closed--sending a report to committee via 20 members, for example. Those avenues are slowly being closed and in the process and although--I think back to Mr. Wells' little prayer a little while ago--it keeps everything in the proper perspective, but it denies a role for members of the Legislature.

10:20 a.m.

Let me go to the estimates now. All of what I said deals with the estimates because the government members feel somewhat threatened by appearing to be critical. I do not know how the back-bencher will resolve it. The estimates committee you propose--I suppose part of the problem with the whole of the estimates now is the possibility of dealing with that. Maybe this committee should be looking at it. You decide on the items you want to look at in any given year in the particular estimate. In other words, we attempt to cover the waterfront.

Part of the problem for everyone is that there is totally insufficient information. You have an estimates book with the expenditures for this year and the public accounts for two years ago, which finally comes forward. Beyond that, you have nothing to work with. Some ministries are now giving more. I guess the first one was when Miss Crittenden of the Ministry of Community and Social Services gave out a blue book of the estimates and gave considerably more information than had been received previously.

I am not sure how one talks about anything in a meaningful way with so little information available to him. I am not sure what you see an estimates committee dealing with unless a good deal more information with respect to the various expenditures that are going on is forthcoming from government.

Mr. Chairman: On page 3 of Mr. Eichmanis' memorandum--for example, right now on our desks are estimates from various ministries for the present fiscal year. Rather than wondering when the Treasurer is going to bring down his budget, I would think that this committee could be meeting right now if the committee had before it the planned expenditures of the various ministries of the government for this fiscal year--if you want to go on a five-year basis, fine--but at least this fiscal year and also an up-to-date statement of what our anticipated revenues will be for this fiscal year under our present system of taxation.

I would think the committee would then be a great help to the Treasurer, before he introduced his budget, by saying; "Look, you are going to be \$600 million short. The ministries' expenditures are going to exceed your revenues for this fiscal year by approximately \$600 million."

Talk about possible cuts, talk about possible sources of taxation, sources of revenue, changes that the Treasurer could take in effect before he brings down his budget paper some time later in April. It is a before-the-facts thing.

Hon. Mr. Wells: That is not the role of a committee of the House under our system, Mr. Chairman. You have been through this. That is the role of the government.

Mr. Chairman: I know, but if--

Hon. Mr. Wells: When they make up their minds on that, then you debate it. But it is not the role of the House to advise the Treasurer.

Mr. Chairman: The only thing is that in actuality, Mr. Wells, it is a fait accompli; the changes are really made.

Hon. Mr. Wells: Yes, but that is our system.

Mr. Chairman: I know.

Hon. Mr. Wells: What you are suggesting are basic changes in our British parliamentary system. I do not think it is heresy to suggest that, but what you are suggesting is going well beyond restructuring the estimates committee. We are going to get into a pit we cannot get out of if you want to continue to make changes in the way the Treasurer handles the budget. I think that may evolve in discussions later, but I think you will just cloud this up and it will all get cast aside because there is some fresh air blowing around in that area. MacEachen has talked about some changes. I was at a meeting where I heard the kinds of things that Mr. Martel is saying coming from John Crosbie and others against the federal Liberal government and how they handle committees and do things and

don't supply information and don't think about the back-benchers and everything. I also heard these ideas about opening up the budget process and having the committees discuss it.

Crosbie said: "Wait a minute, I would not be in favour of that. I have been a Treasurer and what you do not realize is the Treasurer does not even tell his cabinet colleagues what is going into the budget." You know that.

Mr..Chairman: But that is at a later date.

Mr. Nixon: He is not suggesting the Treasurer come here ahead of time and say what he is going to do.

Hon. Mr. Wells: Yes, that is what he was suggesting.

Mr. Nixon: No. He is talking about a white paper that lays out the parameters.

Hon. Mr. Wells: Once you get a committee of the Legislature into discussing what your revenues and your expenditures might be and whether you should cut expenditures or raise revenues and tax and so forth, you are into the policy of the Treasurer.

Mr. Chairman: You are into policy, but all you are doing is recommending.

I am not suggesting that the Treasurer attend the committee meetings at all. I am suggesting the Treasurer submit a statement, which he does during the year in any event, a quarterly or semi-annual statement, an up-to-date statement. It is a balance sheet of what your expenditures are and what your anticipated revenues are without any change--

Hon. Mr. Wells: He does. That is what he presents on budget night.

Mr. Chairman: No, on budget night he talks about new sources of revenues; he increases taxes.

Hon. Mr. Wells: He also presents that; you just miss that in all the other things that are there. Basically the budget he presents in his speech on budget night is the white paper you are talking about. It is the paper where he outlines what the government is going to spend the next year, how much he is going to be able to raise and how he is going to be able to raise the money, in very simple terms. Then we immediately go into committee to discuss that in a procedure called the budget debate.

Mr. Nixon: I might just make a comment here. You fellows are arguing certainly about the crux of any significant discussion we are having here. In the chairman's introductory comments today he spoke with some enthusiasm about the possibility of the members of the Legislature reviewing what the policy might be before the government decides what it is. That is not the first time on earth that that has happened in a democracy in most areas.

My feeling is, and I have said it already, that surely MacEachen's experience in the recent months is going to move us away from the traditional British approach to budgetary decisions faster than anything that has happened in a long time.

I appreciate what the government House leader's objections are, because we just do not do it this way, but it would not remove from the Treasurer, and in a sense his colleagues, the prerogative of doing whatever they feel is proper for the good of the province. Theirs is the sole responsibility to act, but the Treasurer has made a point of saying repeatedly in the House that he is conferring and getting advice from a wide range of business and union interests.

I was talking with him at breakfast today. He had a couple of worthy people having breakfast with him and I was kidding about the budgetary process and so on, but it occurred to me even then, where the hell do we fit into this as elected members?

Sure, we can phone up, we can go jogging with the Treasurer, we can speak to him at breakfast, we can make so-called speech from the throne addresses, and that is when I use the word "naive." It probably is naive to think that we can sit around in a committee representing all three parties discussing a paper put before us by the budget indicating as Minister of Economics where the province is expected to go in the next year and hopefully three years or five years, but that is one of the things, surely, that we should be doing and which I have the feeling as a member we have little or no opportunity to do.

I do not think that it is such a dramatic break with the British parliamentary tradition that it should not be considered.

Hon. Mr. Wells: I agree with you. I think it should be considered. I guess the point I was trying to make and emphasize some of the negatives on is that I think that if we mix the two up right at the minute we are going to just hold up this whole process. We may be able to come up with something on estimates and committees here and everything, but this is going to take a little more work, the whole idea of the Treasury Board.

Mr. Chairman: It is a long-term objective.

Hon. Mr. Wells: Yes. It is easy to say all this in the quiet of this room, but the fact of the matter is that where Treasurers have tried or even inadvertently have done that, oppositions have demanded their resignation. There is whole list of guys who--

Mr. Nixon: It is not revealing what the decision is.

Hon. Mr. Wells: That is right.

Mr..Chairman: Do you mean before the fact?

10:30 a.m.

Hon. Mr. Wells: Everybody was after Paul Cosgrove because they claimed he was--

Mr. Nixon: I understand that.

Mr. Martel: I was just trying to make the point that without the type of information--Might I just add that I think you are probably looking at two different committees, an estimates committee and a finance committee. The one you are suggesting, Mr. Chairman, I suspect is more of a finance committee than one--

Mr. Chairman: Public accounts before the fact.

Mr. Martel: Okay, call it what you want. In dealing with the estimates the way we do now and the way you are suggesting, I only make the point that unless a good deal more information is available, such as knowing why you are spending X number of dollars or why you are increasing something by X number of dollars, to sit and try to work from public accounts and estimates would be an exercise in futility. One just adds roughly 10 per cent every year and keeps on going. You might juggle the figures a little, but without the additional information--

Mr. Chairman: They do it in California with some success.

Mr. Martel: They also have the resources with which to pull some stuff together. We fly by the seat of our pants here all the time. One comes into a set of estimates and there are 45 people from the ministry here to assist the minister. In a hypothetical example, there is Mr. Mancini flying by the seat of his pants, Mr. Breaugh by the seat of his pants, and 45 people from the ministry, and there is supposed to be some meaningful dialogue. Every time the minister gets into a bit of a problem, or if he does not know something, he just calls on someone. Yet those critics are expected to be in a position to make positive suggestions or comments with respect to some of the financing.

Mr. Nixon: The Minister of Natural Resources (Mr. Pope) will not bring anybody in with him. I criticize him for that.

Mr. Martel: I do not know how one expects any meaningful dialogue without any meaningful backup.

Mr. Chairman: Is it an oversimplification to say there is some analogy with a municipal council setting a mill rate and the process they go through?

Mr. Martel: Some councillors go along for the ride and do not have much say. It is usually set at committee and it comes back to council.

Mr. Chairman: Most of them agonize for weeks before the actual mill rate is set.

Mr. Martel: I think what we are agonizing over is not just estimates; I think we are agonizing over roles for members that are meaningful and give some sense of satisfaction. I suppose there is a great deal of satisfaction for a minister who brings a bill in and it goes through and he has had some contribution. I do not think anybody else in the House gets a hell of a lot of satisfaction out

of not being able even to hope to get an amendment through, whether he is a Conservative back-bencher or not. Once the die is cast in our system, nothing changes; I do not care how good it is. The only times I have seen it change--Bob Nixon made reference to the agricultural one, and the Ham royal commission, the one Stephen Lewis highlighted that led to the whole--

Mr. Nixon: Okay, wait. Well, all right. That's right.

Hon. Mr. Wells: We have accepted lots of amendments in the committee of the whole on bills.

Mr. Martel: Yes, in the last six years, but prior to that none.

Mr. Nixon: He is talking about changes in the budget.

Hon. Mr. Wells: Oh no, in the last 20 years.

Mr. Martel: Oh no.

Hon. Mr. Wells: Oh yes. Only Bob Nixon and I were here in the 1960s.

Mr. Martel: I have only been here 15 years. I have not been here very long.

Hon. Mr. Wells: When bills used to go down to committee they used to get changed.

Mr. Nixon: He is talking about the whole concept--

Hon. Mr. Wells: Not substantively, but I mean in the sense of a private member feeling--

Mr. Nixon: He can get a comma put in maybe.

Mr. Chairman: Change whole paragraphs.

Hon. Mr. Wells: I remember going through committee hearings on bills down here in the 1960s, and all kinds of stuff used to get changed.

Mr. Martel: It must have been in the four years before I came.

Mr. Nixon: You are probably thinking of private bills too.

Mr. Martel: In the first four years I was here. I think Arthur Wishart was the only one who accepted one minor amendment. I think people want to feel they are contributing.

Hon. Mr. Wells: I accepted amendments to the Education Act.

Mr. Martel: Yes, I remember that one. Let me just say that we might become more selective when we are looking at estimates and not try to cover every item in every set of estimates; maybe by prearrangement we could select the areas we want to cover and forget the rest to get to the meat of it.

I have two other points. I just think the budget--I take the same position I have now for the past six or seven years--should be done in eight days. I think it is crazy to be voting on the budget in December when all the money has been spent. We are finally giving budgetary approval the last day the House sits in December. That is insanity. We are supposed to be approving a budget from which the government is going to work for the year. We had the former Treasurer, Darcy McKeough, before us and when he was here he, too, felt it should be over with in eight days.

If we use an example of the throne speech this year, it received probably the worst response I have ever seen simply because we moved to tighten it up to have it consecutive, but there were so many supplementary estimates that had to be approved that the throne speech has become totally irrelevant. I was in the House for much of Tuesday afternoon during the debate on the throne speech, and there were only a handful of members present.

Mr. Nixon: I did not get out until Tuesday evening.

Hon. Mr. Wells: Come tonight.

Mr. Martel: Nothing was left. Unless you are going to have participation with people in that as well, you are not going to have much of anything that makes a hell of a lot of sense. Certainly the throne speech has become that this session. I have thought for years that the budget speech, after the Treasurer's leadoff and the two Treasury critics, is downhill. It has had so little relevance that we have slotted it in when there was nothing else to do, just destroying any meaningful debate on it. When there is a budget speech one would hope the Treasurer would stay around for the whole of the response because it is what he is carrying and what he is responsible for; there might be some input there. But after the initial thrust, the Treasurer departs, and it is downhill from then on. There has to be some relevance to what we are doing, and I do not think much of what we do after the die is cast is relevant. It is then just approving it.

Mr. Nixon: I have one additional point to make that occurred to me during Elie's comments. It could well be that if we attempted the estimates committee as described, their work might be finished in a month because if there was agreement that we were not talking about policy matters but just talking to the officials about the allocation of dollars, that sort of review would not be a long, drawn-out review; it couldn't be. With the kind of assistance that is recommended--somebody who has some facility with figures and with the comptrollers from the various ministries here--it would really be just checking the thing over to be sure there is not some misallocation.

And also, to be fair, I made some reference to where policy matters would be reviewed, and Mr. Eichmanis refers to the reference of the committee reports. The thing I like about that is that in the past the reference to committee reports does give a vehicle for the opposition to pick an area where they feel they want to concentrate. Elie has also made the point that during a minority government the committees had an opportunity then to take a referred report, get at it and review the things they wanted to. But we all know that even

now if the government does not choose to have a matter reviewed by a committee, even though a motion in the Legislature sends a report there, it does not necessarily mean that anything is going to happen to it. I suppose we have to live with that. I do not see that in our system, except in a very general way, the opposition is in a position to force anything except by using the traditional weapons of lengthy discussion. or lengthy bell ringing, which is an easier way to do it.

Mr. Mancini: It is very popular these days.

Mr. Eichmanis: Mr. Chairman, on Mr. Nixon's point about substitution, the idea behind having no substitution was that, given that looking at figures not only has become boring but also requires some expertise over a period time, if there is substitution--certainly on a day-to-day basis--the continuity of what you are looking at gets lost. It seems to me that whether you have eight or 12 members, and if they are sitting for the life of a parliament, by the end of that period they have a pretty good idea of what is going on in the ministries they have looked at. I think that would be far more valuable to the House as a whole and to the individual members than having somebody coming in at different times during the course of the parliament and looking at one ministry, then going off and then coming back.

Mr. Nixon: I think my objection was based on my experience as House leader rather than on your approach to it for efficiency of review.

Mr. Eichmanis: Yes.

10:40 a.m.

Hon. Mr. Wells: I think I would agree with Mr. Nixon on it. I am not sure, but I believe I would have unanimous agreement there. We understand the basic premise and principle you are putting forward; it sounds good in theory and in the textbook. In actual practical application you have to have substitution. The whole thing does not work right without substitution. It is just a fact of life, and we have all found it to be so. It has to be there so it cannot block the effective use of any--

Mr. Eichmanis: I do not mean there is no substitution ever at any time, but to get away from the idea of constant rotation.

Mr. Martel: If you have read the Morrow report, the recommendations were that all of those committees stay in place for four years. We developed a social development committee because they interrelate in many ways. Education with kids moves into Community and Social Services and moves into Health and so on. We suggested then that those committees should run the length of a parliament so all members would get some expertise in those fields. Everyone recognizes what we are striving for, but it doesn't work. I think we get more meaningful debate when people are to some degree expert in the field they are talking about.

Mr. Eichmanis: I am not sure the whole thing hinges on whether you have or don't have substitution.

Mr. Chairman: Why don't we have substitution by the House rather than just by whips' slips, where you do not know who, really, is going to be attending a meeting on a particular day?

Mr. Nixon: That's an item that will be discussed--

Interjection.

Mr. Eichmanis: The other point I would like to make is in relation to the white paper on expenditures. I did not assume that this would be an open budgetary process, as the chairman indicated. My assumption was that things would remain as they were and that the white paper would come down at the same time as the budget.

Mr. Nixon: Not fair. You have been using that phrase contrary to what the chairman proposed, in my opinion. I mean, as soon as you talk about an open budgetary process you are agreeing with the government House leader that that is not something we can do here. I think the chairman was talking not about an open budgetary process but about the means whereby the elected members, through this proposed committee, are going to have better access to the mind of the Treasurer and the people who are advising the Treasurer. I do not feel that we have it now.

Mr. Chairman: Are you saying in your item on page 3, under the heading "additional change," that the white paper on public expenditure comes down at the same time the budget is introduced?

Mr. Eichmanis: I assumed that that would be as far as the committee would want to go, but it would not want to go--

Mr. Chairman: What benefit would that be? You are just talking about the five-year program.

Mr. Eichmanis: Yes, for the moment. Maybe the committee would want to change that, but my assumption was that the committee would want to stick to the present arrangement and that the white paper would come down, as it does in Ottawa, with the budget, because the white paper on expenditures--

Mr. Martel: Isn't that the problem no matter how we do it, unless we are going to engage in a dialogue in the House? That is why I say it should be condensed and the Treasurer should be there. What the hell is the sense of everybody getting up and making a lengthy speech of 30 minutes each if at the end the Treasurer might try to wind it all up in a 30-minute response? It is so totally irrelevant because he does not defend the issues as you go along; he responds in 30 minutes at the end, we take a vote and we go home. There is no dialogue. That is really the problem.

Mr. Nixon: There is one precedent, with respect, Mr. Chairman, that I want to draw to your attention that occurred when Robert Macaulay was--we called him the minister of everything, but was he Treasurer at one stage?

Hon. Mr. Wells: No.

Mr. Chairman: Minister of Energy.

Mr. Nixon: He was Minister of Economics; that's right. I can recall he used to insist on giving a major economic report on more or less the state of the economy in Ontario about a week before the budget. We used to twit them a little bit that essentially he was giving the budget. He was not saying what the taxes were going to be, but essentially he was saying, "These are the matters we are concerned about." Good old Jim Allan would come the next week, almost like the Minister of Revenue, and say, "We are going to do this to the gas tax and this to the--"

Mr. Chairman: The sunshine budget.

Mr. Nixon: Yes, right. In fact, if the budget is brought forward by the Minister of Treasury and Economics it could very well be that he could deliver either a speech or a paper similar to what Mr. Macaulay did, which would then be a basis for review by the committee. It is just a suggestion, if we were going to think about going that way. I would like to try something like that.

Mr. Chairman: Is there anything else?

Mr. Breaugh: I think I have had about all the discussion on this I can stand. It has gone on now for about a five-year period and nothing is happening. The last time you were here we had much the same discussion and in the interim not a damned thing has occurred. So let me put a proposal before you to try to deal with this. I believe we have consulted as widely as it is useful to do and we have come to a consensus document, which now sits nicely on the shelf. I want to bump this process around a little bit.

The first thing I propose is that it is now time to take this document which the committee put out, stick it in front of the House one Thursday evening this session and let the ordinary members have a go at it. I am sure all of them have read it with great fascination and are anxious to participate. At the very least parliament ought to give them a chance, as ordinary members, to say the things that members of this committee and you people have had a chance to say. Let the ordinary members have an evening's discussion and see if their feelings, which they expressed in a survey about committees a few years ago, are still the same, if they are happy or unhappy. My guess would be that they would translate their unhappiness about being able to do things, about being irrelevant in committee, about voting on a budget that has already been spent. All of that stuff is going to come up.

My second request would be to see if we could gather some consensus on things we might try without changing everything, without changing all the rules and passing new standing orders. There are lots of things proposed in there which could happen tomorrow if we decided we wanted to do that. Let me try a couple of things on for size.

I think it would be a nifty idea to take a piece of legislation and put it out to the small committee which it is suggested should deal with a bill. It would go, I guess, to the standing committee on general government, and the two critics and

the minister would show up, and maybe one other person, to deal with it. Take the piece of legislation and let them have a go at it to see what pitfalls there are there. Maybe you would want two people from each party to deal with it. Bring it back in through the committee so it follows the standing orders and so on, but let us try. Pick a bill, send it out and see what happens with it.

Let us try, too, what I think is one of the keys to this. You have to deal with the financial side of it somehow. If everybody else is expected to give up the long and boring estimates process, then as opposition members, that is our only go at what we want to say. As an ordinary member, that is my only chance to tell you about the crossing guard or things that are not right at the Oshawa General or whatever. If I yield that and say we do away with that long, boring discussion, I am giving up quite a bit of my leeway as a member. So I am not anxious to throw that one away but I am prepared to try something.

Let's take this document that John Eichmanis has prepared on the key financial aspect of it. Let's see if we can give it a name, decide on how many members we would like to have and say, "Okay, in the fall we will let this one go for a little while." I would be prepared to volunteer, as a critic with three portfolios and who will go through three sets of estimates, if we can find one of those three ministers to volunteer and if the Liberal critic will volunteer along with me

Let's take that one as the field and take from library staff research one or two people and say, "Okay, here is the research component of it." Let's take a particular field like Revenue or Municipal Affairs and Housing or Intergovernmental Affairs. Let's say that this fall, for a period of time, we will let them crank up; or we could have them do it in the summer. Let's see if we can get a consensus on what we call it, how big it is, how open that process will be.

I sense that it could be useful. It could give a committee of members an opportunity to say something to the Treasurer in a given field just as the automobile dealers do, as the teachers do or as anybody else does; it would give them that same opportunity to make a statement on a particular area of expenditure. Try that on for size to see whether we are happy with the process, whether it is a workable one and whether it is worth while making that change.

Lastly, I would like to suggest that we prepare a timetable. My proposal would be that we have the debate this spring. I think that should be done no matter what.

10:50 a.m.

In this spring session we should select the options out of that committee report that we would like to try next fall and we would gear up the bills that would go out: which one would get the financial scrutiny, how we would do that, where we would draw the resources on a temporary basis to do that. We should try them early in the fall so that we will have some experience to relate to. Then we should decide, by the end of the fall session, if we are really going to change the committee system around here and gear up for the

next spring session, which I think is the kind of time we need, or if we are going to quit horsing around with this thing and do it the way we have always done it because that is the way we have always done it.

That is my proposition to you. I would like House leaders and this committee for the remainder of the session to do some little trials, to designate the ones we would like to try on for size without changing all of the standing orders, all of the estimates procedures. Without doing all of those radical things, let's just try it on for size and see if we can get some experience in it.

Perhaps it would also be interesting to take one of these referrals--I think there are seven now--and let the government try it with whichever one they choose. Let them say, "Would you like to allocate some research capacity and let a committee take on those responsibilities and make that report in the fall session?"

I think there really is a need for change. I feel very strongly that all of the members are sticking with something they think is irrelevant and they are sticking with it because that is the way they have always done it; the British parliamentary system has always functioned that way. Those of us who have had a chance to visit Westminster were rather taken aback by the fact that our assumption about the way the British Parliament works is nowhere near the reality of it, that it is far different to what we do here. I propose that we take it upon ourselves today, if you like, to agree that we will try it on for size. I am very flexible about the stumbling blocks that everybody has picked up on.

I believe that one of the prime faults of the estimates here is the fact that it is a rotating sideshow. I can go in today to some estimates committee and say whatever I want to say and Mr. Martel can come in tomorrow and say the same thing as it concerns his riding, or Mr. Nixon may do it the following day. Everybody else who is assigned to that committee listens to the same thing being said three times by three different members. While I am not a fanatic about there not being substitutions, the idea is to put some stability into a committee. However flexible you want to be on that, there is lots of room to move.

My concern is that we have dealt with this matter for about five years now, and before that Camp and Morrow dealt with it, but not a whole lot has changed. So I would like you to try to deal with those proposals. Let some debate be scheduled. Let some pilot projects be designated and tried out in the fall, and by the end of the fall session either we say we are going to change the estimates procedure and the way the committees are set up, or we forget it and go back to the way we have always done things because that is the way we have always done things.

Mr. Watson: I agree with a lot of the things that were said there this morning, but I still do not know how you are going to separate financial matters in any budgetary process or estimates process from the policy. I would like to agree with what Mr. Nixon said, that if you insisted the people who deal only with the financial aspects would do the separation, and one conjures up

people running an adding-machine type of thing or checking to see if the computers are properly programmed, which is not a matter of policy. Even though estimates do not discuss money, the money is the final determinant.

I think we have to be careful about setting up another committee. If we are going to do this in the way Mr. Breaugh suggests, what we are doing, almost, is setting up a select committee to try this kind of thing for a session. That is what strikes me about that.

I think that the suggestion for a specific allocation for opposition days has considerable merit, and although that seems to be another aspect, it is listed in here, I think, as a tradeoff. I do not see that as a tradeoff against the estimates. If you want to call it a tradeoff, it is a tradeoff against using rules of emergency debates in the House, those kinds of things. The tradeoff would be to say, "Here are so many days," whether they are set aside as days or just counted as days. I think that suggestion has merit.

I do not see that as a tradeoff against the estimates process. I see that as a tradeoff against how we operate in the House, within the rules, to make our present rules more workable. If you institute that kind of thing, you do it, but you do not cancel the rule of unanimous consent. If something comes up that you want to have an emergency debate on, that is genuinely right and proper. I think of some of the emergency debates we have had recently. Probably the government will participate, and if the opposition people wanted it, I think they could be covered in what might be called an opposition day.

If you are going to have an emergency debate, you are going to go through the process of deciding whether or not you are going to have an emergency debate when in reality it has been already been decided by you fellows in the morning that we are or are not going to have it. I think that process is kind of stupid. Somebody gets up and makes a motion for an emergency debate and you go around saying, "Are we going to have it or are we not going to have it?" That process in itself determines whether or not you are going to have the debate. It is hard to explain to somebody what you are doing. If the tradeoff there--getting out of that process--is to have certain days, I think that is the tradeoff rather than trading off against your proposal on the estimates.

Mr. Mancini: There are several things I would like to mention. First, I agree with Mike Breaugh that we should have the debate this spring on the document that was prepared when he was the chairman of this committee. We should allow the members of the Legislature to participate in that committee's report, give their views in the House and have them duly recorded so we can review the matter later on. I also want to support the idea of the bills committee. I think that would be a very good committee. But I think my concurrence ends there. I have given this considerable thought, and after having listened to the debate this morning, I can understand the frustrations of all the members.

I think what we are trying to set up here is a poor copy of the Congressional system, where the elected members actually vote expenditures or vote not to have expenditures. There would have to

be a heck of a lot of changes made to our system before I would be prepared to put myself in the position of telling the Treasurer, and voting on, whether or not we should have certain expenditures. There would have to be a lot more freedom given to all individual members and a lot more changes made in our present parliamentary system before I would be willing to take on that particular responsibility.

Let us realize what our system is. We are here as legislators. Our forum is the Legislature in which we debate the policies put forward by the government of the day. They have been given the responsibility to formulate policies to which they allocate certain dollars. The amount of dollars they allocate shows their support, or lack of it, for a particular program.

Frankly, I do not know what it would accomplish to put a certain group of members of the Legislature in a committee and to ask them to review certain expenditures of the government, while at the same time leaving everything else the same. It really would be just a poor copy of the Congressional system.

11 a.m.

The other thing I would like to say is I do not know why everybody is so down on the estimates in particular. Today question period is such that more than half the time is taken up by the two leaders. You have to put your name on a sheet in your own caucus in order to get on question period. If you ask a local question, everybody frowns and jeers a little bit because it is not of significant importance to the province.

When are we, as legislators, going to have the opportunity to speak for our constituents? If you take away our opportunity to do that during the estimates, when are we going to be able to speak for our community organizations, our municipal councils, the public interest groups in the riding we represent? When are we going to be able to speak for them? When are we going to be able to speak to the minister personally about the specific economic impact of a particular program, the way it affects our individual riding?

Interjection.

Mr. Mancini: Having read the report and John Eichmanis' presentation, it is my view that the committee feels we should eliminate the estimates and set up all these other committees and try to tell the government how they should spend their money and try to tell them that we should allocate a certain amount of dollars here and that they have wasted dollars there.

My God, if we are really concerned about that, let us beef up the auditor. Let us give the auditor more to do. Let us set up a special committee that works in conjunction with the auditor if we really want to be specific on dollars and cents. The auditor has a staff of 100 accountants or something and we are going to try to pretend that we can investigate the government's expenditures better than the auditor and his staff? It just really does not make sense.

Mr. Nixon: That is after the money has been spent.

Mr. Martel: Yes, that is correct.

Mr. Chairman: All you can do is raise hell and criticize, but you can't save a nickel.

Mr. Mancini: That is correct, but my initial point was we were going to set up a committee to vote or to not vote moneys.

Mr. Nixon: That was not my impression, although I appreciate what you are saying. It makes a lot of sense.

Excuse me, I did not mean to interrupt what you are saying, but when you talk about using the auditor, of course, we do have a committee that deals with the auditor but it is after the bloody thing is over. I mean we are sweeping up after the thing and pointing out where value for money has not been received or where policy has not been followed.

I am sorry, I didn't mean to interrupt you. I won't do it again.

Mr. Mancini: No, that is fine. I appreciate that. Maybe I was not on the right point there.

Mr. Chairman: If we add half an hour to the question period, will you accept this report?

Mr. Nixon: If we had a two-hour question period, we would accept it.

Mr. Mancini: I think what we are trying to do is make the role of the members more important and more relative, and really a parliamentary system is not the Congressional system. We do not have some of the freedoms that the members of Congress and state legislators have. We do not specifically vote for certain expenditures or not vote for certain expenditures.

Here, in this assembly and in all parliaments, we basically debate certain policies and it is up to the government to allocate funds to make sure those policies are carried out. Unless we are prepared to make significant changes to that whole process, I really do not--

Mr. Chairman: I think this boy thinks he is on the threshold of power.

Mr. Nixon: Darn right, he is.

Mr. Mancini: Anyway, that is the way it is as far as I am concerned.

Mr. J. M. Johnson: I would like to support Mr. Breaugh's proposal that the standing procedural affairs committee proposal for a committee system be debated in the House at least. That will maybe clear up some of the problems, but I doubt it very much.

On the nature of the committee system, anyone who suggests we can have them unwhipped and following nonpartisan lines has to be dreaming.

Mr. Chairman: Well, baa.

Mr. J. M. Johnson: Some of the members mentioned the fact that we voted certain ways, but when I look across the House I do not see too many people standing up as two of our members did last Thursday.

It is maybe a coincidence, but the odd time if you would see a split in party lines I could accept what you are saying, but until I see that day I just cannot accept it. I think Remo Mancini said it quite clearly, that we don't have that right and anybody that thinks we do is daydreaming. I think we have to accept the political reality that we follow partisan lines and base whatever whatever changes we are making on that assumption.

I think there is a lot of merit in having opposition days. We spend too much time on budget and throne debate and it is meaningless because the members make it meaningless by their speeches.

I sat in the House a good part of last Tuesday afternoon and, quite frankly, I did not hear a lot that was worth listening to. Maybe if I lived in a particular riding it would be different, but it seemed to dwell a lot on closing a school in a certain riding and the concern was for that member, and rightly so. But it is hard to say that the rest of the members of the Legislature are going to spend their afternoons and evenings listening to that. There has to be some better mechanism than that.

Mr. Chairman: They obviously do not.

Mr. J. M. Johnson: I would think that if we could cut some of the budget debate back and give a few days for opposition debate it might improve it. It certainly cannot hurt anything.

Mr. Watson: May I have a supplementary here? What is the alternative for the provision of the House leader putting on a general debate?

I had the experience of coming in here on a by-election, and a month after I got here they said, "Okay, you get up and make your first speech and do it on the budget debate." I was naive and I had to learn: "What am I doing talking about the budget?" They said: "You do not talk about the budget. The budget is the opportunity when you can get up and you can talk about anything you want to." You go through this theory that there are two occasions; you can debate on the throne debate and you can debate on the budget and you can talk about anything you want to and nobody is going to call you to order to get back on the topic.

Mr. Martel: And no one is going to respond.

Mr. Watson: Nobody will respond, but on the other hand, you have that feeling you have stood up and made your speech, that kind of nonsense.

Maybe that opportunity is important, but if you are going to close off the throne debate in so many days and you are going to close off the budget debate in so many days--I could concur with that--then do you have to invent another vehicle?

Mr. Breaugh: That is the point. The point is exactly what Mr. Mancini brought up.

The opposition members, all ordinary members, are not prepared to yield all of their avenues at the same time. You have options in there. We now say that there are really three places where you have a chance to go and say whatever you want to say about the folks back home, the rink in the south end or whatever. You can get up on the throne speech debate and do that, you can do it on the budget debate, or you can go to the estimates and have a shot at it.

We are moving to tighten up--or we have--the estimates procedure about trying to keep it at least down to a particular vote so it is in the ball park. What I am saying, and I think the report says it, is that we are not prepared to yield all that opportunity. We are prepared to make some choices so there is a place, and I hope there always remains a place, where the ordinary guy can get up in here and say whatever he wants to say without a whole lot of restrictions on him or her. That is important.

Mr. J. M. Johnson: Let me just finish and then Mr. Watson can take over. I think what Michael Breaugh is saying is very true, that the members should have an opportunity to say what they want, but the problem comes in that no one is particularly interested in listening to what they have to say. I am not sure how you can avoid that problem. Certainly I question very much if anyone is going to respond, so that is a difficulty.

I would like to close by simply saying that I think that we should proceed with debate on this report handed down by Michael's committee in the last session.

Mr. Chairman: Is there any problem with that, Mr. Wells?

Hon. Mr. Wells: No.

Mr. Chairman: Can we get that on?

Hon. Mr. Wells: We certainly can agree with the first one. By motion we can put the report back on and then we can schedule it for Thursday debate.

Mr. Chairman: Can we do that within the next couple of weeks?

Hon. Mr. Wells: We assume that you are all going to be there to deliver these speeches or to get the caucuses to deliver these speeches.

Mr. Nixon: Even there the problem is, as is similar with almost any report that comes on, the members of the committee are the ones who take the debate time.

Mr. Chairman: We have a whole evening. We lay it on for eight o'clock for two and a half hours and if each committee member is reasonable in the time he takes everybody should have an opportunity really. If we do not finish that Thursday night, if somebody else wants to speak, fine, we can always drag it over for another night.

Mr. Wells, I would like to see it preferably before the budget, in other words, a week from tonight.

Mr. Nixon: God knows when we are going to get the budget.

Mr. Chairman: Can we have it a week from tonight?

Mr. J. M. Johnson: Apparently there is a committee report coming in a week from tonight.

Hon. Mr. Wells: A week from tonight is the public accounts committee.

Mr. Mancini: When is the budget coming in?

Hon. Mr. Wells: I think the Treasurer (Mr. F. S. Miller) is going to announce that today.

Mr. Chairman: We will leave it in your good hands, but do not leave it for a nice, beautiful spring evening in June.

Hon. Mr. Wells: Mr. Chairman, I am sorry to tell you that all the Thursday evenings from now on are going to be nice and beautiful and good for walking around and eating. We will have to restrain ourselves to be here on Thursday evenings.

Mr. Chairman: How about a Tuesday evening?

Hon. Mr. Wells: Tuesday evenings are legislation.

Mr. Breaugh: As you may have heard.

Mr. Lane: Mr. Chairman, I have been listening with some interest this morning being a new member of this committee. But being a member who has sat on a good many committees for a good many hours over a good many years, anything we do to improve the input from the back-bencher, whether it belongs to the government side of the House or the opposition side, is going to be worth while. There is nothing is as boring as sitting here listening to 20 hours of estimates where the minister and the two critics take up two thirds of the time, and if a government member wants to get on, the opposition member is mad at him because he does not think he should have any time. So I just simply sit here and let the clock tick away and wonder why in the hell I am here. It is the most boring process for a government member that possibly can happen.

If we were talking about dollars and cents rather than government policy, I would hopefully get some of the debate going, because I am not always happy with one hospital getting X number of dollars and another not getting any, or one road getting X numbers of dollars and so forth. I would like to talk about some of those things. But we are not going to take our minister to task about government policy in the estimates. That does not make any sense for a government member to do that.

We really have very little input in the estimates the way they are. It is just a boring process. We are around here to protect the minister in case he needs us in the case of a vote; the clock ticks away and we do not really accomplish anything. If we can make that more interesting for any of the back-benchers, especially for the government back-benchers, then God bless.

The same thing happens in the House. The only time we have a chance to talk about the folks back home or the problems back home is either in the throne debate or the budget debate. Even in question period, if one of us asks a question, the opposition feels that it is a private question. We do not take our share of the time in the question period. If we did, we would be criticized by the opposition parties. I simply do not do it very often, because if I do, somebody is going to say, "Well, he is not interested at all; the minister wanted to have the question asked, so he asks it." Really, the process is not very meaningful.

Granted, we do have opportunities that the opposition people do not have in forming government policy and talking to the ministers at various times when we are in caucus or whatever. I am with Mike Breaugh on this if we can make some changes that are going to make it more meaningful. After all, we spend a lot of hours around this place and hopefully there is some meaning to them. I find a lot of time is being spent, but the caucus takes up all that matters as far as we are concerned.

I am not critical about the opposition people because I know that we have more opportunity to have input in bills before they go into the House and in other discussions than they do. But I think it is fair to say there is a fair bit of antagonism if we try to take up too much of the estimate time or too much of the question time. We really do not get our proper share of it. Anything we could do to improve it, then let's just give it a try even if we do not write it in stone for awhile.

Mr. Chairman: Thank you very much. Do any of the three House leaders want to comment on Mr. Breaugh's suggestion regarding a pilot project or an experimental committee? Do you have any objection to that?

Hon. Mr. Wells: I do not have enough information to make up my own mind as to whether or how that would work. One of the things that is missing from this report is any indication of time. Maybe I am reading it wrong, but when I read the timetable, it says: "The committee, after receiving all the estimates and after selecting which estimates it would review in detail, must report all estimates out of committee by a date determined by the committee."

They can sit down and look at them in March and say, "Well, let's not be hasty; let's agree to report them all out by next December."

Then it says, "The estimates to be considered in detail have to be reported out by the end of the session." Assuming that we always end the sessions in December--that is when the end of the session is--they have to be reported in December. In effect what you have is an estimates committee or a finance committee or whatever you want looking at some estimates in detail and the others hanging around there with the end of the session as the timetable.

What is the difference between that and what we have now? There is no difference. There is no suggestion that some minister or department is not going to be spending five or six weeks down there with the committee and that the others will not all be left until the end; and then, depending on what time they have, they might decide to take a little time and so forth. In other words, there is nothing in there that attracts me to the idea that this is going to do the job more expeditiously.

Mr. Eichmanis: The idea behind this was that because the estimates committee could not deal with all the estimates in detail, because it could only deal with some estimates, for those it would deal with in detail it would want to have more time, and they would then be reported out by the end of the session. But for the ones they did not deal with--say, the vast majority they did not deal with--presumably the committee, once it made up its mind which estimates to look into in detail, would then decide that the others would not be looked into in detail, and then those that were left out of the detailed scrutiny would be reported back automatically to the House.

Mr. Martel: Without any consideration at all?

Mr. Eichmanis: That's right.

Mr. Martel: Let me pose a problem to you then. You are only dealing with one committee by and large. Let us say we decided to do four in detail. What quid pro quo is there for Remo Mancini to talk about the folks back home? You are never going to have an opportunity to talk to a minister then.

Mr. Mancini: What about the policy field?

Mr. Eichmanis: The policy fields committee would have the annual reports of the ministries referred to them automatically.

Mr. Mancini: That's one committee.

Mr. Eichmanis: The three policy field committees would have the annual reports of all the ministries referred to them automatically so that during that debate on the annual report the individual members could then deal with those matters.

Mr. Breaugh: You are into a problem right away that we had to face, that is, there is a lot of give and take here.

If you want to you could take the whole proposal that is there, which is an attempt to say: "Okay, we have a public accounts committee which will look at somebody's expenditures in detail after the money has been spent. We have a finance committee which will look at another ministry's expenditures before the money is spent or while it is being spent. We have areas where we can have generalized policy discussion. We have areas where the member is free to say whatever he wants to say about problems he wants to raise. We have opportunities for political parties to move motions and have special debates."

The difficulty is that you must have those combinations intact. The danger is just what Mr. Martel is pointing out. You cannot take it in isolation. In other words, you cannot take one part of it and ignore the rest or you lose. You wind up with just what Mr. Martel is saying. Some ministry gets under the gun in a given year, and probably six or seven others get no scrutiny at all. So you must take a package where you provide the combination that sees that some scrutiny goes to ministries across the board.

Mr. Martel: There is another problem that arises. What you are saying is that we are going to cover some things in detail; we are also going to be covering probably more topics or some topics in greater depth, that we are going to look at an annual report.

I simply go back to the point I made originally, and everyone knows where I stand. You are going to be faced with a greater barrage of civil servants. One of the interesting things I saw about England was that the government back-benchers did not trust the civil servants there. They felt that they had to serve as part of the system of checks and balances against a large bureaucracy.

My concern is that you are going through annual reports, you are dealing with things in detail. Who in the hell is going to help the member to get ready in a meaningful way as he faces them? As I say, I have counted them, I guess, for three such estimates in the fall. I came in one night and there were 35 civil servants with the Minister of the Environment; on another night I counted 23, I believe, and on another night almost 40.

11:20 a.m.

Mr. Nixon: What is even worse, Mr. Chairman, is when you get a minister in without any assistance at all under the impression that he can answer all the questions, and the people who are responsible to him are not here to assist him. I am referring to the Minister of Natural Resources (Mr. Pope), who prides himself on being a fast man with a gun and comes in without his advisers.

However, we have heard the argument about the need for additional research. I think there should be a lot more money for research, not necessarily applied in the way Mr. Martel has referred to frequently, and that is on the basis of one researcher per member. I still believe that it ought to be at the discretion of the individual caucus, and obviously we do need--

Mr. Martel: I would not force a researcher on anyone who did not want one.

Mr. Nixon: That seems to be what you are talking about.

Mr. Martel: No. I would never say you have to have one. Well, it's part of the overall package.

Hon. Mr. Wells: Listen, without getting into that argument--

Mr. Mancini: It is not relevant to the debate.

Hon. Mr. Wells: Can I just offer--

Mr. Martel: Just before you do, I disagree fundamentally with Mr. Mancini when he says it is not fundamental to the debate. It certainly is because if you are recommending a total package you are recommending dealing with things in a lot more depth and a lot less superficially than we deal with them now. Part of the problem is that most of the stuff we deal with even in estimates is goddamned superficial.

Mr. Mancini: We have not recommended John's report.

Mr. Martel: No, but you are recommending for debate, for want of a better name, the Breaugh report. What that recommends is a whole series of changes that are going to deal with material in depth.

Mr. Mancini: All I have done is to suggest that it be debated.

Mr. Martel: All I say to you is that presently we just deal with everything superficially and with nothing in depth, and we deal with things superficially because we do not have the staff with which to be competent to deal in depth with issues, and that is part of our problem around here. I would never for a moment suggest to Mr. Nixon that I would foist a researcher on him or on anyone. I just believe we should have the option that if you need one you get one.

Mr. Nixon: I have just one point before the minister sums up or whatever.

Hon. Mr. Wells: I am not going to sum up.

Mr. Nixon: It could be that if the concept of an estimates committee were to be carried forward, the idea of doing just two or three ministries in depth might not be essential. It could be that if we really restrict ourselves to dealing with the dollars, the committee could look at the dollars and report back to the House in reasonable time. The advantage to the opposition members or back-bench members is that the reference to--

Interjection.

Mr. Nixon: Well, I think there are some advantages that I will tell you about some time.

Hon. Mr. Wells: Sorry.

Mr. Nixon: I guess it is the old teacher coming out in me. Mr. Breaugh was making what I felt was a hell of a good position for the committee today.

I just have a feeling that the committee on the reports of the various ministries is a better vehicle for opposition members to bring forward, let's say, their pet objections, maybe even the areas where they think there is a little political mileage, which heaven forbid should ever come into any of our committees. That really could form a very good vehicle, and the actual formal approval of the estimates on a dollar basis could be done in the streamlined, efficient way the minister and maybe the government side are very keen on.

Mr. Mancini and others have made the point very well indeed that we as opposition members or back-bench government members certainly do not want to miss the chance to raise some local matters, and that can certainly be done under the report of the committee. The idea of the actual dollars taking us until December does not necessarily have to hold true.

Hon. Mr. Wells: That would be good. There are a couple of things that have to be considered in this. There are certain requirements, and there is one component we have not even touched that is all part of this. As Mike Breaugh was saying, these things all fit together. There is interim supply, which we have not touched. In the last year this has developed into another major part, which in fact is just a vehicle so that the bills can be paid. In fact, it was used, I suppose, a bit the way your party was using it last year in Ottawa, which resulted in a rules change in which interim supply is now automatic in Ottawa now; it is not viewed as one of those things that you hold up as a dramatic step to force something else.

The other point is that from a procedural and practical point of view the estimates have to be passed and the supply bill has to be passed in order to bring finality to a session. These are the things that we have to look at in terms of the government and making sure that the money is there and able to flow and so forth.

Certainly if we could clean the estimates up by June and have the supply bill passed and the budget debate over, I think that would be ideal; then let the fall session deal with legislation and policy and so forth. We have reversed that. We get to the point where we have to spend most of the fall session doing estimates all the time.

Mr. Martel: The budget comes in too late.

Hon. Mr. Wells: That is only part of it. The thing is if there were some kind of agreement, but I do not know how much our people are willing to get into the business of reviewing every ministry's annual report. I do not know whether that would substitute.

Mr. Chairman: Again that could be left up to the committee.

Mr. Charlton: It is not a requirement. Every ministry's annual report would automatically be referred to the policy committees. That does not require that the committee has to deal with them. That would leave committees and individual members on those committees to raise matters--

Mr. Chairman: In fact, if it is a separate committee, you can sit all year.

Mr. Charlton: It is not a requirement necessarily to deal with every ministry.

Mr. Martel: The interim supply stuff bothers me because--

Hon. Mr. Wells: Sorry, Elie, but to get away from the problem, as Mike said, you have to have some way so it is not the sort of high profile ministry whose annual report you want there and want their estimates to be considered the longest. It is going to work that way; you are going to have all the emphasis on the one or two of high profile and the others are going to go by the wayside.

Mr. Charlton: Do you think the critics of the other ministries are not going to have matters to raise?

Mr. Chairman: It is that way to some extent right now.

Hon. Mr. Wells: But what are you going to do for Remo Mancini when he wants to talk about Essex county and nobody--

Mr. Chairman: He has a policy committee.

Hon. Mr. Wells: I think we have to remember that while the big policies have to be discussed, it is just as important that the shoreline problems of Essex county or the GO train station in Agincourt get on the record at some time too.

Mr. Martel: Let me ask a question because I am not sure if we are on the same wavelength when we are talking about interim supply becoming a vehicle. If we were to approve the budget within eight days of it being tabled and we voted on it, I am not sure how relevant interim supply becomes.

Hon. Mr. Wells: No, it is not the budget. By the budget you do not mean just the budget motion, you mean the estimates. The estimates have to be approved and the supply bill passed before you do not need interim supply, although even then there are technical reasons for interim supply being needed, that I will not go into in detail.

Mr. Martel: No, but the question I raise, if one approves the budget, as they do in Ottawa, eight days after it is brought down--

Hon. Mr. Wells: Yes, I see, that then assumes to allow interim supply for the whole year.

Mr. Martel: Does it not in Ottawa? Do they need interim supply after they get the budget approved?

Mr. Chairman: I would not think so.

Hon. Mr. Wells: I am not sure.

Mr. Martel: The only reason you need interim supply is to get money to continue to finance the various programs you have, so you move to interim supply because the budget has not been approved.

Hon. Mr. Wells: It is because the supply bill has not been passed--not the budget approved.

Mr. Nixon: I have never been able to see any sense in having interim supply if the House has voted you a supply bill. We have argued about that before. It seems to me it is funny that you and the government people would be worrying about that. It should be the opposition that is worrying about your spending money you do not have any right to.

Hon. Mr. Wells: Without getting into the long legal terminology, if you have some interim supply even after the supply bill is passed, you can then spend the extra money above the supply bill which comes back in the supplementary estimates.

Mr. Nixon: Oh, I see.

Hon. Mr. Wells: In short, I think it is about like that.

11:30 a.m.

Mr. Martel: No, but if you had the budget approved--just using a hypothetical case, let's say we get a budget next Tuesday and eight sessional days after that we vote on the budget, where do you need interim supply then? Maybe I am obtuse.

Hon. Mr. Wells: That just approves the budget policies of the government. It does not officially say that the House says you can spend the money that has not been voted to you in the supply bill.

Mr. Martel: Okay.

Hon. Mr. Wells: But the two things could go together. If you were rewriting a rule that said you had the budget debate in eight days, we could then say that you could also have an interim supply bill--

Mr. Nixon: You can't have interim supply until the estimates are completed.

Hon. Mr. Wells: Sure.

Mr. Chairman: Isn't that the purpose of it?

Hon. Mr. Wells: But you need interim supply until the estimates are approved.

Mr. Nixon: Yes, I am sorry.

Hon. Mr. Wells: That is what I mean. You could have a rule written that would take away our rule that you can only have interim supply for six months and say that once the budget policy of the government is approved in a debate that lasts for eight days--if that is carried, you also carry an interim supply bill with that.

Mr. Chairman: Should we wind this up now? All right, gentlemen, I think we have exhausted this subject and I would suggest we debate the old report or that the old report will be the basis of the debate. I think anybody who is going to be taking part in this debate, some Thursday night very soon, will look at today's Hansard of this committee meeting and the consensus from that debate will help this committee further consider and make recommendations.

Any other comments? Thanks to the three House leaders.

I would like to finish this report.

Mr. Eichmanis: Mr. Chairman, may I just introduce this before we start that?

Interjection.

Mr. Eichmanis: Mr. Mancini, did you want to--

Mr. Chairman: Is that the type of thing we have to have notice of?

Gentlemen, for the next item, Mr. Mancini has a motion he would like to move. Would you like to present and discuss your motion, Mr. Mancini?

QUESTION PERIOD

Mr. Mancini: Mr. Chairman and members of the committee, off and on for the past year we have been discussing the problem of question period and the allocation of time to the different parties for question period. This matter has been discussed here several times. We have taken it back to our prospective caucuses and it was raised again at the second last Liberal caucus.

Unfortunately, we had to report back to the Liberal caucus that there was no resolution of the problem. They have asked that I prepare a motion to put before the committee for it to officially vote on the motion and get the results recorded, one way or another. That is just a bit of background on the subject.

Mr. Chairman, I refer specifically to section 27(b) of the standing orders of the Legislative Assembly. My motion would change section 27(b).

Mr. Chairman: Mr. Mancini moves that section 27(b) of the standing orders be changed to read: "The order of oral questions shall start with two questions from the Leader of Opposition, followed by two questions each from the leader or leaders of the other opposition parties in order of their membership in the House. All members shall then participate in questioning, starting with the official opposition. The Speaker shall make adjustments to take into consideration the strength of each party in the House."

Mr. Mancini: I will table this motion with the clerk, Mr. Chairman.

Mr. Chairman: Do you have copies of that?

Mr. Mancini: I will ask the clerk to make copies of it.

Mr. Chairman: Do you want me to read this again or should we wait until we get copies?

Mr. Breaugh: I think we have seen it before.

Mr. Mancini: No, it is a little bit different but the same in principle.

Mr. Breaugh: I think the committee has dealt with this proposed change although the wording is somewhat different. It seems to me that it gave the Progressive Conservative Party a majority of questions for ordinary members. The Liberals would then follow in a second-ranked position and we would tail in third.

We have run the clock on the question periods for the last little while and in this session the Liberals have used up 305 minutes of questioning as opposed to 218 minutes by us. Aside from the leaders, 31 ordinary Liberal members, 25 New Democrats and seven Progressive Conservatives put questions.

I feel the committee has in effect dealt with the matter if not the motion. The consensus we came to was that we would not change the standing orders. It is a consensus which I believe reflects the amount of time actually spent by the various political parties in question period. I am sticking with the original consensus of the committee, that no change be made to the standing orders in regard to question period.

Mr. Chairman: Any other comment on that?

Mr. Watson: From a practical point of view I think where the adjustments are coming is with the supplementaries. I sympathize with the Speaker. I for one was struck by the fact that in the questions posed to Margaret Thatcher in Westminster, it was the supplementary that got to the guts of the issue. However, it seems to me that here we get a lot of supplementaries which could be ruled as new questions although they may be on the same general topic. Not very often do supplementaries get ruled out of order. I am sure that if someone wanted to lay down the law they could be so ruled.

But I want to ask a question of Mr. Breaugh. In the little summary you have there, are you counting supplementaries as questions?

Mr. Breaugh: They are counted in the time, yes.

Mr. Watson: But in the numbers that were asked?

Mr. Breaugh: No. Those are the original questions. The time accounts for supplementary questions as well.

Mr. Watson: The numbers of questions refers to the number of questions. They do not refer also to the supplementaries that come about.

Mr. Breaugh: No. Then there would have been a lot more.

Mr. Watson: They might distort those figures somewhat. I think we are almost out of this discussion in a way because the figures that Mr. Breaugh has given show that we do not ask very many.

Mr. J. M. Johnson: Mr. Chairman, this is just a brief question to Mr. Mancini. In view of the facts presented by Mr. Breaugh, why do you feel the change is necessary?

Mr. Mancini: I basically feel that it should be formalized somewhat; that the rotation should clearly demonstrate that the official opposition has one third more seats than the third party. It is done in Ottawa without any particular problems. If there was a difference of two or three seats, probably the subject would not come up. But when one party has one third more seats than the other party, then clearly something should be in the standing orders which would give the Speaker the right to make decisions which would allow them to have a greater proportion of the questions than the other party.

As for the figures Mr. Breaugh has brought up at this particular time, I cannot dispute them. I have not kept track. They may be totally different in the next session; I do not know. I do not know how we can expect to run the House fairly when the rotation is the same as it has always been.

Mr. Breaugh: May I interject, Remo? You are now getting 305 minutes of question time and we are getting 218 minutes of question time. You have a natural advantage in the rotation now by the fact of being recognized first, and you are are using it reasonably well. I would put to you that that is a reflection of the size of each caucus and the results of the election and so on, and is about as far as I think it is reasonable to go.

Mr. Mancini: For example, take the length of the time spent. If an issue is hot on a particular day and we ask Larry Grossman or Keith Norton a question and the leader goes with his second question to the same minister, that is when we are going to get the lengthy answers. If the questions are repeated by the Leader of the Opposition, naturally the answers are going to be somewhat shorter. I think that may be partly the reason for the way the figures have shown out.

I have to believe that the difference in the numbers of the political parties should be recognized. We received a report that was prepared by our clerk late in 1981, right after the election, which referred to several legislatures--Nova Scotia, Quebec, Saskatchewan, for example--and I took part of the wording right from the Saskatchewan report where it stated, "During the course of question period the Speaker attempts to ensure that questions are distributed based on a party's representation in the House."

Mr. Breaugh: Maybe we could do that; we could give you the same amount of time as the Liberal party gets in Saskatchewan. Would you accept that as a friendly amendment?

Mr. Robinson: They have about as much as the NDP has in Newfoundland.

Mr. Mancini: We held our own in Newfoundland.

Jack, I hope that answers your question.

Mr. J. M. Johnson: I would feel that by the Speaker making adjustments to take into consideration the strength of each party in the House, we would get six, three and two. That would seem to be about right.

Mr. Mancini: If we have an election in three years and if the NDP goes down to nine seats, then their questions should be--

Mr. J. M. Johnson: Conservatives could use 50 per cent of the time.

Mr. Mancini: The Conservatives now can get up anytime.

Mr. Breaugh: That is the problem with this attempt to do it this way. Once you introduce that element to it, there is no question that your standing order proposal would now mean that Conservative back-bench members would get six questions, you would get three and we would get two.

Mr. Mancini: In reality, Mr. Johnson, it would not work out that way. I think the Conservative members would participate the way they have participated over the past seven years that I have been able to observe. When a member of the Conservative caucus has a question that he feels he wants to get on the record, he or she will rise and be recognized.

Mr. Watson: Lots of days they do not get on. Lots of days someone on our side wants a question and they do not get it.

Mr. Mancini: Mr. Watson, there have been a lot of days that I have wanted to get on and I have not been able to get on and I deeply resent the fact that my party, which won a third more seats, basically must share the time with a party that has a third fewer seats. I do not think that is a reflection of what the electorate said they wanted a year ago.

Mr. Watson: So when I ask a question and they recognize you, I am going to stand up and say: "It is my turn now. On a point of privilege, it is my turn because we have twice as many members over here as you have. Therefore we need two turns in a row."

Mr. Mancini: You have cabinet ministers who do not participate except for the answering of questions. Most of your parliamentary secretaries refrain from participating although some of them do occasionally. If you take 26 cabinet ministers and another 25 parliamentary secretaries, you end up with basically 10 or 11 private members.

If you will look over the seven or eight questions that were asked, I seriously doubt if more than one or two of them were asked by parliamentary secretaries. I bet that most of them were asked by the real back-benchers in your caucus. I think you are distorting it somewhat by saying "The Tories have 70 seats and therefore if we wanted to we could the question period." In reality that is not true.

Mr. J. M. Johnson: Remo, you cite Manitoba as an example, but they have a two-party system in Manitoba and in most of the other provinces. In fact, there is not another province that has the same problem that we have here.

Mr. Mancini: They had the foresight to have it in their standing orders.

Mr. J. M. Johnson: In order to come to a compromise in this I would like to suggest an amendment to the motion that it be tabled for a month and in the month's time we ask the Clerk of the House--

Mr. Breaugh: We have done that.

Mr. J. M. Johnson: I am sorry. Is that where you have the information from, Mike?

Mr. Breaugh: No, we did it before.

Mr. J. M. Johnson: What were the results of that?

Mr. Breaugh: Not much difference, not a great deal. The reason it stays constant is that in the rotation, whoever is the official opposition has the initiative to ask two questions first and to get the additional supplementaries. That is where the time (inaudible) shows in and that is why it stays relatively constant.

Mr. Chairman: Any other comments on the motion?

Mr. Lane: I would just like to make one comment. I can appreciate what Remo is saying, but the fact that the leader of the official opposition gets the first two cracks of the day at whatever happens to be hot in the countryside gives him a fairly good advantage because maybe the third party would have liked to have asked that question first and got the marks for it.

I think that is the advantage that you people get by being the official opposition. I can see what you are saying and I have some sympathy with it, but--

Mr. Mancini: Can I ask you a hypothetical question? What if the situation was that the third party--no matter which party it was--was down to 10 seats and there was an official opposition with 34 seats and a government with an enormous amount of seats? What would we do then? Would we still have the same system? I think it is totally unfair.

Mr. Lane: I think we had that back in 1971, did we not?

Mr. Breaugh: The other side of the coin is when you had a minority. There was an official opposition and a third party in that instance with a very small difference in the seats and they had equal shots at it.

Mr. Mancini: Yes, I am saying that that is fair. When the two opposition parties are very close to the same number of seats, say, three or four seats, it would be impossible to work out a formula, and we are all aware of that.

Mr. Breaugh: It would not be impossible, quite frankly.

Mr. Mancini: When one party has a full third more than the other and we try to pretend that we are going to go in rotation and give everybody an equal amount of questions--

Mr. Lane: It seems to me that we must have had this same situation back in 1971 and 1975 where the Liberals had a lot more seats than the NDP had and yet I do not remember having a discussion on this thing. We had more seats than we have now, but certainly the Liberals had a great many more than the NDP had.

Mr. Charlton: The other problem with your motion, Remo, is just in the scenario which you laid out where one of the two opposition parties had a very small number of seats and the additional seats went to the government side, so there would be a hell of a lot more government back-benchers.

Mr. Mancini: From watching the House of Commons in Ottawa, I hardly think that the majority Liberal government dominates question period or tries to dominate question period. I think that is a straw man that is being set up.

Mr. Breaugh: But in the British House of Commons they do. In the scenario you laid out, for example, where there was a dramatic difference, we have covered that by designating the number of seats it takes to get status as an opposition party.

Mr. Mancini: That has been changed because you recognize it is 30 seats now as far as funding is concerned. It is another sore point for the Liberal caucus. I want the government members to know that.

Mr. Breaugh: No. Where one party split to something like less than 12 seats, it would not have status as an opposition party, as a third party.

Mr. Mancini: That is another advantage that was accorded to the third party where they are now recognized as 30 seats for funding. That was not fair after the results and that is something else you gentlemen should take into consideration.

Mr. Breaugh: I think we are a little off the track here. I think we are ready for the question.

Mr. Chairman: I have just one comment I might make, whether or not it will resolve it. What about just adding the last sentence of Mr. Mancini's motion and leaving the present order as is?

Mr. Mancini: That would be acceptable to us, Mr. Chairman.

Mr. Chairman: Are there any objections to that?

Mr. Breaugh: Yes. I appreciate that ordinary members on the government side may well want to ask questions from time to time, but I do not want in the standing orders something that says that the Speaker has to allocate seven questions to the Conservative Party when they may not want seven questions.

11:50 a.m.

Mr. Mancini: The Speaker does not have to do that.

Mr. Breaugh: It says, "The Speaker shall make adjustments to take into consideration the strength of each party in the House." In this House there are 70 Conservative members and I have never heard one of them say that they want to do that.

Mr. Mancini: If the Speaker looks over to the government side and there is no one standing, he will move quickly to the opposition.

Mr. Breaugh: That is not what it says. We have gone through this I forget how many times now but on a number of occasions.

Mr. Chairman: How about "may" instead of "shall"?

Mr. Mancini: That is fine, Mr. Chairman.

Mr. Breaugh: I cannot envision a change to the standing orders which is going to do anybody any good.

Mr. Chairman: The word "may" instead of "shall"?

Mr. Breaugh: I hardly think it is worth bothering with.

Mr. Chairman: These are just suggestions. I just think if you give the Speaker a little more leeway, a little more authority to make some adjustment--

Mr. Breaugh: The Speaker has that authority now. In all of our considerations about the question period, it really does come down to the Speaker having discretion to recognize members, to go on a rotating basis, and that is it. The rules about what the Speaker must do are really minimal in our House, and the discretion is left to the Speaker.

That is why, when Mr. Speaker Turner says he wants to cut down on the supplementaries, nobody objects to that because we have come to a consensus that the Speaker in the question period rules the roost and it has to be that way. He needs that kind of leeway. He needs almost total discretion in the question period to maintain order and to get some semblance of fairness in there.

We have gone at this ever since I have been a member of the committee and we always come back to the same thing, namely, you cannot dilly-dally around with the standing orders on question period without it deteriorating in some way the ability of the Speaker to control the question period. That is the key point and that is why I am saying this time, like every other time we have looked at it, leave the standing orders as they are.

Mr. Lane: I would be very reluctant to support the motion because of the fact that we are imposing something on the Speaker and we have not even discussed it with him that I know of. He has a lot of problems there now.

Mr. Mancini: It has been discussed with the Speaker.

Mr. Lane: It has been?

Mr. Mancini: Yes, it has been discussed with the Speaker and his view is that the only area where he has discretion is in supplementaries, as Mr. Breaugh has said. That is the Speaker's view, as far as I understand it.

Mr. Lane: We are going to have more wrangling in the House if we ask him to take in another consideration.

Mr. Mancini: We could undertake to work out a formula, but it has to be done quickly. We have gone through two sessions and this is our third session now and time is going on.

I think the opposition Liberals have been very fair. We have tried to have it decided here in the committee without bringing it to the floor of the House and we have tried to get the co-operation of the two other parties and we have tried to show them that we have a third more seats than the third party.

Mr. Breaugh: You get a third more of the time now.

Mr. Mancini: I think that that has to be addressed.

Motion negatived.

The committee continued in camera at 11:48 a.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REPORT ON WITNESSES BEFORE COMMITTEES

THURSDAY, APRIL 22, 1982



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
Piché, R. L. (Cochrane North PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

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LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, April 22, 1982

The committee met in camera at 10:10 a.m. in room 228.

10:37 a.m.

REPORT ON WITNESSES BEFORE COMMITTEES

Mr. Chairman: This is the Ontario Law Reform Commission Report on Witnesses before Legislative Committees. Do you want to take this? Are you through with this, gentlemen?

Mr. Eichmanis: Smirle and I have tended to summarize what we thought would be the most important, salient aspects of the first two chapters of this report and Smirle has worked up a presentation on chapter 1, the introductory chapter. I have done a similar thing for chapter 2. Maybe Smirle can run through chapter 1.

Clerk of the Committee: Basically I will just deal with the highlights of chapter 1, which is the introduction of background chapter.

Throughout the whole of the report the main argument of the commission is that the law concerning witnesses before legislative committees should be set out in as clear and comprehensive a manner as possible. Later on, when we are dealing with other chapters in the report of the commission, we will see they recommend that part II of the Legislative Assembly Act be enacted, dealing specifically with the rights of witnesses before committees.

The commission also feels it is essential to retain some sort of flexibility in the committee system rather than having a rigid and formal structure.

Mr. Eichmanis: Excuse me, Smirle. I was wondering if it might be useful for the new members of the committee to go over the background of how this all came about. It might be useful. You may know more about it than I do, but it seems to me that the previous committee put out a report on witnesses before committees. There were some questions to be asked.

The committee did not come down with any specific recommendations or anything like that and felt that we needed some more help. Then Mr. McMurtry was asked that the report of the previous committee be forwarded to the law reform commission and that they should then have a go at the question of witnesses before committees. Mr. McMurtry then did forward this report to the law reform commission and they worked on it and produced this report. So this report is the result of a previous committee's report.

Clerk of the Committee: The report of the commission was issued last September. On page 2 of the report you will see 11 questions which our predecessor committee dealt with in its report

on witnesses before committees. Those were the basis on which the commission initiated its review and they deal with those questions and some other ones throughout the report.

The commission felt that in order to retain flexibility in the system there was a need to achieve a balance between what is necessary to achieve adequate protection for the witnesses and what is necessary to enable parliamentary commissions or committees to function effectively. Throughout the whole report, again, they stress that legislative committees must accord witnesses a fair hearing in all respects. They give examples: the witness must receive reasonable notice of the time and nature of the proceedings, reasonable notice of the committee's terms of reference, and that they should not be subject to irrelevant or vexatious questioning or unwarranted harassment.

As part of this general recommendation, they speak about preparing a booklet for witnesses before committees, which sets out the basic rights of the witnesses; the responsibilities of the committee; providing the witnesses with the terms of reference of the committee, which perhaps has not been done in all cases in the past, so when the witness appears before the committee he knows what powers the committee has and what matters they are studying.

Another string throughout the report is the stress on the fundamental differences between proceedings before a court and before a legislative committee. The commission noted in chapter 1 that in a court the determination of rights between contending parties is in issue, while in a legislative committee the purpose of the hearing is and must necessarily be one that is political. The search for relevant information through the proper function of government is the question which is basically in issue before a legislative committee, and the rights of individual witnesses are more a secondary matter and not directly or immediately put in jeopardy.

The commission therefore felt that the trappings of judicial proceedings and particularly the strict rules of evidence which are required in court are inappropriate before proceedings of a legislative committee. We have had a number of examples of it in the past several years--one could take the Re-Mor hearings--where the committee said, based on parliamentary tradition and practice, that the rules of evidence do not apply before committees of the Legislature and they have been prepared to grant certain rights to witnesses, such as counsel attending with them, right of counsel to object to questions put by members and to state the reasons for their objections.

Mr. Chairman: Even the Canada Evidence Act--

Clerk of the Committee: The commission argues that the evidence acts do not apply to any proceedings before a committee. However, in the past the Attorney General has advised us to let them claim the protection of the Canada Evidence Act.

Mr. Mancini: So what does that mean? What does not apply to the claimant?

Mr. Chairman: If they want to ask for it, or their counsel wants to ask for it, and they claim immunity under the Canada Evidence Act, whatever statements they make cannot then be used against them in any subsequent charges which may be made against them in court, or any action in civil proceedings.

Mr. Mancini: Do you not think that kind of negates the work of the committee?

Mr. Chairman: It is like the fifth amendment. It is the same idea. We get from them the information we are asking for and at the same time we are not prejudicing them.

Mr. Eichmanis: On that same topic, the new Constitution Act has a section there, section 13, which provides for that. "A witness who testifies in any proceedings has a right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings except in a prosecution for perjury or the giving of contradictory evidence." Now that is in the constitution.

Clerk of the Committee: Page 6 of the commission's report. The commission cites what they call a classic statement of the powers of the Legislature. I will just quote it. It says:

"In the unlimited character of the claim for information, which may in principle be made at any time, there lies a fundamental parliamentary right of the highest importance. It is a right which both constitutionally and practically is a condition precedent to all efficient and parliamentary government."

Again, what they are stressing throughout is the right of parliamentary committees, the right of the Legislature, to information.

The rest of chapter 1 basically deals with functions of the assembly being a legislative function, a financial function, a representational function, and the kinds of activities that the committees engage in, such as scrutiny of legislative policies and day-to-day government practices, perhaps through the examination of annual reports under standing order 33, through consideration of proposed legislation and through the consideration of estimates of expenditures.

The commission stresses that the committees only have those functions or powers which have been delegated to them or provided in statute, and they can only consider issues which have been referred to them by some provision, either in statute or standing order by order of the House.

They also point out that the functions which have been delegated to the committees--the review functions, study of estimates, study of legislation--permit members to consider relevant issues more conveniently in a generally relaxed and informal atmosphere where they may be given a more thorough and comprehensive scrutiny, where witnesses may be called and examined at length rather than deal with the problems of calling a witness to the bar of the House and trying to deal with the witness at the bar of the House. There is also the time-saving feature involved in using the

committees of the House to deal with some of the business of the House.

However, as the committee notes towards the end of chapter 1, in the end it is always the responsibility of the Legislature to deal with the committee reports and any matters raised in the reports can only serve to focus the attention on details that might not otherwise come to light.

They go into a discussion of the establishment of committees, the distinction between select and standing committees, for which today perhaps there is not much of a distinction, and the general rules prevailing in the assembly applying to the committees of the House.

Mr. Chairman: Do they want us to have the job here to make some recommendations?

Mr. Eichmanis: Yes.

Mr. Chairman: This is making recommendations from these reports.

Clerk of the Committee: What the committee might consider is while reviewing each chapter, take a look at the recommendations, which I have given you for chapter 2, and deciding whether you agree with the recommendations or not, whether there should be something added or subtracted, and then we could make a report to the House based on these hearings.

Mr. Chairman: Are you going to submit some draft recommendations?

Clerk of the Committee: There are recommendations contained in the report.

Mr. Chairman: Where are they?

Mr. Eichmanis: They are at the back, starting on page---

Clerk of the Committee: Starting in chapter 2, they contain the--

Mr. Chairman: Where? In this book?

Clerk of the Committee: Yes. Right at the very end.

Mr. Eichmanis: In chapter 5, page 119, is the summary of all the recommendations contained throughout the body of the report.

Clerk of the Committee: John and I propose to go through with you the recommendations contained in each chapter. As I said, if you felt you wanted to consider the recommendations, whether you agree with the commission's recommendations, or disagree, and how you wish to deal with them.

Mr. Chairman: Fine.

10:50 a.m.

Mr. Eichmanis: If we can turn to chapter 2, starting on page 11. I see this chapter deals with the powers of legislative committees as outlined in section 35 of the Legislative Assembly Act. On page 11, you have the relevant sections of chapter 35 indicating the powers of the committee. The commission notes that the authority to compel witnesses to appear before committees and to answer questions is conferred on the assembly alone. The assembly then delegates that authority to committees.

Further down that page, it indicates the various sanctions the Legislative Assembly Act provides, punishments and so on, for various disobediences or refusals to co-operate.

Going back to this question of self-incrimination, the commission points out at the top of page 14 that although evidence taken in a committee cannot be used in a further proceeding, there is nothing to prevent a case being brought under the Criminal Code and being done independently outside or removed from the evidence from the committee. So there is nothing to prevent a parallel court action taking place along side the committee proceedings.

Clerk of the Committee: That is for perjury.

Mr. Eichmanis: Sorry. For perjury.

The next section, section 2, deals with the classification of witnesses according to the circumstances of their appearance before legislative committees. This relates to the initial question from the former committee as to whether a person appearing voluntarily with a summons, with a Speaker's warrant or invitation, should be accorded any different status. The conclusion of the commission is no. They should be all accorded the same status. There is no difference between how they arrive at the committee.

Mr. Watson: I do not think there is any argument on that, is there?

Mr. Eichmanis: No. But we just wanted to have that clarified. The former committee wanted to have that clear because in the public mind, there is the perception that if you come voluntarily, you have a different kind of status than if you were summonsed.

Mr. Charlton: The reason why the question was asked was because we have run committees of inquiry here and we have also run committees which are, for example, dealing with bills and we are holding public hearings on the bill. You get all kinds of groups and individuals coming and making presentations. We wanted to clearly establish whether, first of all, there was any difference between those two functions and if there was not, should we then be informing people who are coming in to make a presentation on a bill that they are subject to a number things they may not necessarily understand.

Mr. Chairman: Surely to goodness there is a difference between that and somebody who was summonsed as a witness.

Mr. Charlton: That is not what the commission is saying though.

Mr. Chairman: That seems ridiculous. If someone comes in, presents a bill and makes some comments about the bill, they probably embellish the effect of it and the great advantage of it as we do in the House, as politicians do from time to time. Do you mean to say that person is going to be sworn as a witness and subject to any laws as to perjury, etc.?

Clerk of the Committee: On page 15, at the bottom of the second paragraph, the commission says, "The commission therefore firmly believes that insofar as the circumstances of appearance are concerned, the legal rights and obligations of all witnesses who appear before legislative committees are and should continue to be identical." So speaking to the rights and obligations, there is the obligation not to perjure themselves, the right perhaps to counsel, to fair notice of hearings and notice of what the terms of reference are.

Mr. Eichmanis: It is a question of law, a matter of law. In practical circumstances, the committee itself may perceive differences between someone who is invited and someone who appears under a summons. But as a matter of law, the actual treatment of whatever kind of witness and the obligations should be the same.

Mr. Chairman: In other words, what you are saying is if someone comes in with a private bill, whether he is the chairman of a little church organization or whether he is a solicitor representing that organization, he is going to be sworn.

Mr. Eichmanis: No.

Mr. Treleaven: No. Sworn or unsworn, the rules are the same. The subpoena is the same. They could be sworn.

Mr. Chairman: If they are not sworn, they are not subject to the same law as to perjury, are they?

Mr. Eichmanis: No, they are.

Mr. Charlton: That is what the commission is telling us.

Clerk of the Committee: Giving false evidence before a committee of the House or to the House may be considered to be a contempt of the House under the provisions of the--

Mr. Charlton: Whether you are sworn or not.

Mr. Eichmanis: They deal with that question later on in the report where they indicate that whether a witness is sworn or not, the various punishments indicated in section 45 are available.

At the bottom of page 15, section 3 deals with oaths and affirmations and there is a long discussion about the use of oaths and whether they are necessary. I think on the whole, the commission concludes they are not necessary under the law since the sanctions do exist under section 45.

The question then is whether an oath or an affirmation should still be used to indicate to the witness that he has some obligation in relation to third parties. The commission on page 20, in the middle paragraph, includes: "We recommend that, where the rights or reputation of an individual or the propriety of an individual's conduct are or may be involved, as a matter of practice, committees should employ the type of affirmation to be recommended below. We again acknowledge that there is often a very fine line dividing questions of an 'investigatory' nature and questions of a purely 'administrative' nature."

Mr. Breaugh: Could I just say this is one of the few areas where I have some question about the recommendations of the commission. We have tried to deal with this thing but it is difficult because people come before committees in such different ways and for such different purposes that it is tough to draw a common line. The committee generally takes the point of view that you should inform people appearing before committees of what might happen to them.

I am still not convinced it is a reasonable assumption that somebody in Thunder Bay who appeared yesterday before a committee to say his piece about the Planning Act is ever going to be completely aware of all the things that could happen to him, as opposed to someone who appeared, say, as a subpoenaed witness in the Re-Mor matter who came to the committee with a lawyer at his side. He knew before he opened his mouth that he had to be careful and the lawyer was there to warn him.

I would tend to go the other way on this one. If you are having committee hearings and you are taking testimony that subsequently might result in sanctions or some kind of charges being laid, I do not see that it is such a big deal to offer some kind of a small affirmation before they start.

You are right; it is intimidating. But is it not better to intimidate them a little bit and let them know what it is all about, than let them get themselves into a jackpot and try to sort it out afterwards? I would rather give them cheap legal services at the front end of the system than expose them to the possibility of very expensive litigation afterwards.

Mr. Eickmanis: If I could just draw your attention to the fact that at the top of page 21 the commission recommends that particular oath be used where the committee deems it appropriate.

Mr. Breaugh: All I am saying is that if we are now expecting police officers to read a short statement to everyone they arrest, is it not reasonable to say we should have witnesses read a short statement here in committee or have the clerk of the committee read it to the witnesses?

I am not saying you have to make a--this thing gets crazy in a hurry. I would almost say that at the beginning of each committee session, the clerk could read what the affirmation is or inform what witnesses were there. The problem is what happens if you start at 10 o'clock in the morning and the clerk does the job and at 11:05 the witness walks in the door?

Clerk of the Committee: There are two things in response to that I might mention. One is the booklet that the commission recommends be prepared and distributed in advance to each witness before a committee which sets out their rights and obligations.

11 a.m.

The second thing is, just as an example what we did in the Re-Mor hearings, and that was that the Ministry of the Attorney General prepared a statement for either the chairman or the clerk to read to each witness when they were called before the committee dealing with their right to claim protection under the evidence acts, so that was read to them in every case and they made the election. At least, they were informed.

Mr. Breaugh: I am not as concerned about that type of situation. What I am concerned with is someone who thinks he is appearing before the local town council public works committee on potholes in the street and does not know, and any way I cut on that, if I hand them a little brochure which is going to be full of legalese, then I really am intimidating.

I think my preference on that would be to have the clerk, before each witness appears before a committee, saying, "Just before you start--

Mr. Mancini: I remember actually doing that for a while.

Mr. Breaugh: Yes. I think it is an obnoxious practice, I admit it, but it is less obnoxious than the alternative.

Mr. Chairman: To me the key words here, the key phrase is on page 20 in the paragraph that John read, in the middle of the paragraph, the last sentence: "We again acknowledge that there is often a very fine line dividing the questions of 'investigatory' nature and questions of purely 'administrative' nature."

I don't think it is a very fine line at all. If you have an administrative committee dealing with administrative matters, whether it is, as you say, a local committee of council or some tribunal or a standing committee of this Legislature--and I have used that example before--someone is coming here because they have asked to come here to make a presentation and to consider some regulation or some piece of legislation, a private bill, what have you. Are you going to have that man sworn in before he makes his presentation and is he going to be subject to questions from committee members and if he does not answer completely accurately or makes an honest mistake he is going to be subject to some sort of prosecution? This is ridiculous.

Mr. Treleaven: Mr. Chairman, I think the bottom line in this as I read it back last September when we got it, the witness has no rights and he has no protections under either evidence act, period. That is the bottom line. He has none.

Mr. Breaugh: He should be aware of that.

Mr. Treleaven: That is right, but do not get terribly

fancy and hand him 10,000 words to explain around and around in legalese, to say in the bottom line he has no rights, no protections whatsoever. He is open, his soul is open once he walks through that door in front of any committee of this Legislature.

Mr. Chairman: He is naked.

Mr. Treleaven: Naked? Well, I did not want to be obscene, Mr. Chairman, I use better wording.

This might solve one of the problems we have in the committees because so many people wish to attend. If we would simply head up the advertisement to appear before committees that "You are a damned fool if you do," we would have no one.

Interjections.

Mr. Treleaven: Anyone would be a fool to come in, knowing what is going to happen.

Mr. Rotenberg: When people come before any committee of the Legislature, as you say, to present a brief or talk about a bill, there is someone who sits down at this table, they are not sworn in, there is no way you can do anything to them if they do not tell the truth, and all those kind of people--you would use the word "witnesses" but they are not really witnesses, they are just deputations appearing before a committee of the Legislature.

If someone says they are naked and they have no rights, that is fine, but we have no rights over them either. It is only when a witness is either subpoenaed--

Mr. Treleaven: No.

Mr. Rotenberg: We had a month of hearings on the Planning Act and a group of ratepayers come walking in and they sit down here and I ask them a question and they may or may not tell something that may or may not be so. They are subject to prosecution?

Mr. Treleaven: Yes.

Mr. Breaugh: You see, that is the point which the committee tried to make and which the Ontario Law Reform Commission affirms, and which legislative counsel here affirms.

Interjections.

Mr. Chairman: Order.

Mr. Rotenberg: That makes absolutely no sense at all.

Mr. Chairman: Dave, could you sit around here somewhere? Do you have a microphone there?

Mr. Rotenberg: Yes, there is a microphone.

Mr. Breaugh: You see, Mr. Chairman, that is the point.

What Mr. Rotenberg just said is the commonly accepted theory of the place, that these are just casual people appearing before a committee. They can consider it if they want, it makes no difference.

What the legislative counsel said here, what the committee said and now what the law reform commission has said is directly opposite to that. It says that, in fact, everybody who appears here is liable, including ministers of the crown, civil servants, and people walking in off the street, for everything they say.

It also goes on to expound on the point--which complicates it even further--that they may have certain privileges as the members have. We have tended to be extremely casual about committee hearings. What all these legal people are saying is that you better not to be so casual. Whether you are prepared to admit it or not, in law there are a lot of obligations here that we are choosing to ignore, but we really can't ignore. Now we have to deal with that.

Mr. Chairman: The point I was trying to make is to separate the investigatory type of committee hearing from a purely administrative nature. As far as the investigatory type of hearing goes, such as the Re-Mor one, I agree 100 per cent. Every protection should be afforded that witness and every obligation should be afforded that witness. He should be sworn in, he should have the right to counsel, there should be the right of cross-examination and the whole bit.

When we think of the number of committee meetings we have, of a strictly administrative nature, where somebody has asked to appear to make a submission--sometimes the public asks to come to that desk to make a comment about something that maybe a member has said--

Mr. Mancini: Like having John Sewell before the committee.

Mr. Chairman: Yes, right. Do you mean to say that a person in a scene like that is going to be subject to prosecution for perjury at some future date if somebody points out the record in a conflict?

Mr. Breaugh: It does not quite do that. One of the things we were suggesting is to make some divisions about the kind of hearings you have. Make the distinction between subpoenaing a witness who is brought here by means of a Speaker's warrant and whom we swear in--

Mr. Chairman: Or even invited in.

Mr. Breaugh: Right. Make that a definitive line and provide for some kind of public hearings of a less serious and formal nature. One of the problems is that the law reform commission holds the opinion that you cannot make that distinction. Whether you read them their rights or not, whether they have counsel or not, they all fall into the same category with the same liabilities and the same rights.

Interjection: That is what you get.

Mr. Breaugh: Yes. It does go on to try to get into the issue of whether you can take something that is in Hansard and start

criminal proceedings from it. I was not very clear as to what their conclusion was on that.

Mr. Eichmanis: There is one point you have to remember in all this: just because someone is liable under section 45 to be brought before the bar does not mean that the committee has to use that procedure. It is still up to the committee to make a determination whether it will employ the mechanisms in place or not.

It is not as if there is some kind of automatic thing where, in the opinion of one member of the committee, somebody has perjured himself and, therefore, he should automatically be brought before the bar of the House. It is still the determination of the committee as a whole. There is still discretion involved. I get the impression that somehow you are interpreting this as that there is some kind of automatic process whereby if somebody thinks there is perjury involved, away you go. That is not true.

Mr. Charlton: Yes, but that does not deal with the question of what you tell the people before they come in. What you are saying is that they may perjure themselves and the committee may decide not to do anything about it. On the other hand, the committee may decide to do something about that. Therefore, it still does not deal with the question of what you tell that witness before he opens his mouth and how you deal with the potential liability.

Mr. Rotenberg: Mr. Chairman, I want to ask a question. Everyone who sits at this table, standing before a standing committee--let us say discussing rent control or the Planning Act or whatever--are they "witnesses" in the legal sense?

Interjections: Yes.

Mr. Rotenberg: Then why cannot we, as a Legislature, put something in our act which in effect says that that person who comes to make a deputation is not a witness and get him away from all this stuff?

Mr. Treleaven: Because then you are opening up the door for the person to tell whatever little stories or lies he wants and you are setting up two classifications of "witnesses."

You are trying to say ahead of time, and this is what is wrong with giving them the warning, "Okay, you have certain protections, and you do not have certain protections." How do you know what he is going to say? You do not want to let him out of the bag before you know what he is going to say.

11:10 a.m.

Mr. J. M. Johnson: If you do not warn him beforehand, you should not have the right to use his remarks against him.

Mr. Rotenberg: As a member of the Legislature, say I have a group of ratepayers in my riding and I have a meeting in my riding about rent review; we had a long series of hearings here. I go into my riding and I invite a bunch of people, some landlords and tenants; we have a public forum and I chair the meeting, let us say,

as a member of the Legislature and people come to that public meeting at the public school and get up and say things. They are not witnesses, because they are not before the bar, but if somebody lies he is still subject to all the laws of libel and slander and whatever else.

If a member of the public wishes to come into this room and speak to me as a member of the Legislature on the same matter because it was put before the House, he is still subject to the same rules of libel and slander; he cannot come up and say anything he wants. I do not see why a member of the public is going to be intimidated; we are going to stand up here while a person casually comes in who is not educated, does not have a lawyer and does not have to bring a lawyer. The end result of what you are saying--and maybe that is the law at present--is you are going to intimidate the members of the public and prevent them from coming and exercising their legitimate political rights to come here before a committee of this Legislature.

Mr. Charlton: It is not a question of what we are saying. We asked the law reform commission to tell us what the legal realities were.

Mr. Rotenberg: Let me finish. The legal realities are--

Mr. Charlton: We have the right to make a decision, to make some changes.

Mr. Rotenberg: That is what I am saying, if the legal realities are that anyone who casually walks in off the street to appear before a private bill is subject to all of that possible harassment, then we should be changing the rules around here, and we have the right to change those rules--

Mr. Treleaven: No. No.

Mr. Rotenberg: --and a person should be no more liable-- If it is an inquiry like Re-Mor and they come in under oath, then everything applies and I agree. If a person comes in to make a political deputation before a political body, which is his right, then we should have the kind of rules that say that he is no more liable sitting at this table than he is liable sitting in a public school in my riding making a deputation to me up there, no more and no less.

Mr. Epp: Nobody is saying he is more liable in here.

Mr. Rotenberg: Oh yes.

Interjection: No, we're not.

Mr. Rotenberg: Yes, he is.

Interjections.

Mr. J. M. Johnson: That's the problem.

Mr. Chairman: We cannot lose sight of the fact that there

is a little difference between a public meeting such as you were chairing, and appearing before a legislative, all-party committee, with Hansard here and all the structure that we have in a committee, as compared to a public meeting where people are invited to step up to a microphone or something. You have to distinguish between them.

Mr. Rotenberg: I feel that the kind of hearing we hold as a Legislature, a hearing on a bill or legislation, should be that kind of hearing and there should not be any extra obligation on the members of the public in a hearing here. I do not think we should take unto ourselves that mantle of being like a court, so that people here have to have lawyers and watch themselves, if they say anything out of line they could be charged with perjury and so on. I cannot see that. They are subject to the normal laws of libel or slander or whatever when they are outside of this chamber.

Mr. Chairman: What about using the oath? The affirmation could, in fact, establish that now you are going to be subject to the laws of perjury.

Mr. Rotenberg: That is exactly the point. When we are in a Re-Mor type of situation, absolutely yes. Then we as a committee are sitting almost as a semi-judicial body. I agree with you. But when we are sitting as a legislative body, I would never say to a person who is going to come in, as we had all during February, and Mike was there. We had a whole bunch of people coming in and talking about the Planning Act and giving their opinions on what they think and how they think their local council gave a group of ratepayers the gears and so on.

I am not going to have that person stand and have to take an oath to say how he thinks the Planning Act should be handled and how he thinks it should be changed. I am not going to make a person go through that. That is ridiculous. Then we have got to change the rules.

Mr. Eichmanis: I do not think that the commission is recommending that the affirmation or the oath be taken in every instance. The only instance where the committee feels that the witness will in some way be affecting the reputation or whatever of a third party who is not present. It is not a blanket--

Interjection.

Mr. Rotenberg: We are not a court and we don't want to act like a court.

Mr. Eichmanis: I think the commmssion is not trying to set down a fast rule on all these things. It is saying that there is a great deal of discretion involved here; that the committee does not, in any instance, have to do that. It is really up to the committee to decide under what circumstances it will require an affirmation to be made.

Mr. Treleaven: There is an assumption being made here that there is something improper or illegal about telling a lie. There is nothing wrong legally with telling a lie.

If I see a dog out there and I tell you five minutes later I did not see a dog, unless I am interfering with someone's rights, or someone else is suffering because of that, there is nothing wrong with telling a lie. Therefore out on the street or in your deputation up in North York, if you want to tell a lie, fine, you are not hurting anybody.

In here legislation is being made and influenced by "witnesses," by what people say to the legislators. Therefore you must have a much higher standard of truth and telling the truth and penalties for lying here than you do in the school. Therefore, in my submission you have to have the same rules as the court.

Right now we have higher standards than in the court because every witness in the court is sworn. Here they are not sworn even though they are subject to much higher standards. In courts you have the Canada and Ontario Evidence Acts for protection. Here you have no protection without being sworn.

I agree the standards are much higher, but do not put this place in the same category as Punkeydoodle Corners, WMS, and what you might say there. There is nothing wrong with telling lies out in the street.

Mr. Chairman: Following along with your--

Mr. Rotenberg: I have to disagree fundamentally as a matter of principle.

Mr. Chairman: Just a minute, Dave. Following along on your reasoning on your analysis, which is excellent, do you not feel that the key here is the oath or the affirmation?

Mr. J. M. Johnson: Yes.

Mr. Chairman: Anybody who is going to be subject to these restrictions and these obligations should automatically, by having been asked to take the affirmation oath, realize the position he is in.

Mr. Treleaven: Fine, yes. But then there is a problem. If you then set up a set of rules that removes us from a blanket duty to tell the truth and being subject to penalties, if you then pick and choose, then how do you tell ahead of time whether you want this fellow sworn or not? Aren't you almost automatically in a situation of swearing everyone who appears before a committee?

Because what do you do? Wait until you think he is starting to colour the truth and say, "I want this fellow sworn"?

Mr. Chairman: Automatic. Remo?

Mr. J. M. Johnson: Mr. Chairman, are you making a list?

Mr. Chairman: Yes.

Mr. Mancini: Mr. Chairman, all of us have had a good deal of experience sitting before the two types of committees that we are

talking about. One is where the church group, as you mentioned earlier, comes in for a private bill, and the other is the investigatory type of committee where we investigated Ontario Hydro contracts or the Re-Mor scandal, and things like that. I found a basic fundamental difference between the way the committees act in those two situations and the way the witnesses themselves conduct their testimony.

For example, I sat on the private bills committee. The whole nature of the committee was different. There was no tension. People would come in and they would have briefs which had been prepared by nonprofessional people.

But then again, when we sat on the Ontario Hydro contracts scandal committee, we had the best-paid lawyers in Toronto appearing before us and the lawyers sat with the witnesses and gave them information. The point I am trying to make is the witnesses and the committee themselves knew what was going on and they took the matters as seriously as they had to, and they took whatever steps they had to protect themselves.

I cannot believe that if we have appointed an investigatory type of committee to investigate some kind of shady dealings that people are going to casually walk in here without the services of a lawyer and kind of give whatever evidence he or she wishes to the committee. That is just not going to happen and it has not happened in the past. I do not think that we have, in any way, hurt the legal system or the judicial system by not allowing these witnesses to be sworn in.

Just to give you another example. When I sat on that Hydro committee, one lawyer after another appeared before us with his witness and he got the best advice that he could get--I am talking about the witness--as far as to what he should say and what he could not say. On more than one occasion the lawyer would speak up and say: "We are not very happy with this question. What is your point? What are you trying to get at?"

These people are not going to merrily prance in here and perjure themselves and put themselves into such a position that they cause themselves legal problems. Frankly, I really do not appreciate swearing in the witnesses. We tried that for a while when Mike was the chairman and it seemed everytime we asked a witness to take the oath, we were almost apologizing. We would say, "Now do not get nervous, we are really not doing this to make things too officious, but we would like you to take the oath anyway." It was okay but it was almost an embarrassing thing.

11:20 a.m.

Mr. J. M. Johnson: Mr. Chairman, I am quite concerned at the direction we could go. I think we should have two types of hearings and two types of witnesses. I have to respect what David has said about your school-type meeting. This is the type of hearing we have had in the Planning Act, which we have been dealing with in general government. If you were to advise those witnesses that what they might say could come back to haunt them, I think a lot of people would refuse to testify.

We advertise because we want public input. We want the average person to have the ability to come before a committee and give us their opinions. I suppose that is the reason why we were up in Thunder Bay yesterday. The day you tell those people they have to take an oath before they can say anything and put themselves in the position of perhaps paying a penalty for it, you are jeopardizing the whole process.

There are very few people who will appear in court without the benefit of a lawyer or legal advice. Yet you are asking them to do the same thing in the average committee. I just find that extremely difficult to accept. If it is a type of committee hearing about something that requires an oath, so be it. I do not think it is a matter of someone deliberately telling a lie. I think they make mistakes. Perhaps they are not as versed in the area as someone else might be. Before they testify, they should have the advice of a lawyer if we are going to pursue it.

Mr. Treleaven: Could I just respond to that for one minute? On the libel and slander law--and I am no expert on it--the defensive truth is absolute. If you make a statement and you are honestly mistaken, that is an absolute defence. You cannot be penalized if you make an honest mistake. Okay? It is only when you make a deliberate falsehood.

Mr. Chairman: You know it is.

Mr. Treleaven: That you know it is. Okay. That is subject to proof one way or the other. But an honest mistake does not open you up for prosecution.

Mr. J. M. Johnson: The point I was trying to make was that many average citizens will feel intimidated by the process if they realize there could be consequences if they do make a mistake. They would have to prove it was an honest mistake and not a deliberate mistake.

Mr. Chairman: I think we had better have John--we are probably a little off the track here as to what really is being said in this report. Go ahead, John.

Mr. Eichmanis: I just want to draw your attention to--we are sort of running back and forth along the report. The report is written in a very sequential, logical fashion and we are bringing up points which the commission answers later on in the report.

You will notice on pages 126 and 127 the commission makes very strong recommendations that evidence taken in a committee should not be used against that person at a subsequent hearing. So the liability of a person only relates to the Legislature taking an action against him. It does not relate to an action being taken outside the Legislature, because the commission is very strong in recommending that evidence should not be used in a subsequent proceeding.

It limits the penalties or the sanctions to the Legislature itself and not to any outside court. The liability is only limited

to what the Legislature can impose or the sanctions that legislation can impose and not the courts.

Mr. Rotenberg: Given all that, when some of us were in Washington, we saw that in any hearing a senate committee or a house committee has, everybody is sworn and it is an intimidating process. You see people taking the fifth amendment all of the time. You see people being very careful. Everybody who comes in has their lawyer and it is a very formalized type of hearing. Maybe that is the way they want to run the government.

While I am sitting as a legislator, I do not want to run committee hearings that way. I want anybody to be able to come in off the street and give their opinions and not be worried by subsection 6 of section 45, giving false evidence or prevaricating.

I do not think if someone believes it to be the truth, it is still false evidence, if we have that restriction. I do not want people who come before our legislative committees discussing legislation or private bills to be called witnesses. I want them to be called depositions and there is a vast difference.

Mr. Breaugh: Could I just interject for a moment?

Mr. Rotenberg: Go ahead.

Mr. Breaugh: One of the things which is bothering me a bit about this discussion this morning is that I hear a lot of opinions that fly directly in the face of the facts as presented by the Ontario Law Reform Commission. Frankly it does not matter. It is what David Rotenberg wants these people to be called. The law reform commission is laying out for you what their status is.

Mr. Rotenberg: The law reform commission is not a court either, Mike.

Mr. Breaugh: What I am saying is the law reform commission is laying it out based on what is in the report.

Mr. Chairman: Hold on. This is Dave's turn. Do not interrupt, please.

Mr. Breaugh: What concerns me quite a bit now is that we have heard several opinions about what you would like to have. You are not dealing with the problem of what is before you. Before we go much farther in this thing, I would like to have legislative counsel visit the committee and give us their opinion. I think the Attorney General's office should have some of their staff before the committee.

Having read the commission's report, I am a little unhappy with sections of the recommendations in here, but overall I am supportive of their recommendations. I would like to us proceed with that because it seems to me they deal with problems we have chosen not to even look at for a long period of time. At some point we are going to have to do that.

I am quite happy to have us go on with the discussion this

morning, but I would like the committee to come to an agreement that we will proceed with some assistance from legislative counsel and the Attorney General's office prior to making recommendations and that at subsequent meetings we will deal with not what we want but with the problems which have been put before us by the Law Reform Commission.

Mr. Rotenberg: May I continue? Thank you, Mike, because you said a lot of what I wanted to say, except for this. The law reform commission is telling us what the situation is under our present Legislative Assembly Act. The point I was trying to make was that we should have a different class of people coming before us as, I would call it, deputations. We could have a different type of hearing for legislative processes than for a judicial or inquiry process by making some change in the Legislative Assembly Act. The Ontario Law Reform Commission is reporting what is and not what might be.

I think you are perfectly correct and I would endorse your idea of bringing forward legislative counsel and/or people from the Attorney General's office. But if the majority of the committee agrees with the position I am taking philosophically, then we should ask those people how to amend our Legislative Assembly Act to accommodate the position this committee might want to take.

Certainly this Legislature is supreme within its own precincts and this Legislature can change its own act to accommodate what this Legislature wants to do and how this Legislature wants to deal with people coming before it.

Mr. Chairman: The idea has been suggested that at our next meeting we have legislative counsel here, probably--did you say the clerk of this committee? The Clerk of the House and someone who, in some way, can interpret to the satisfaction of the committee the recommendations and the comments of the law reform commission, possibly even someone who has been--

Mr. Eichmanis: Springman is the one who wrote it.

Mr. Chairman: Yes. Mr. Springman himself would be helpful. We must remember that one of the things the law reform commission is attempting to do, and historically what it has always attempted to do, is to protect people's rights. We are losing sight of that. We seem to think that individuals are going to be subject to more obligations and subject to more prosecutions because of what happens if they appear before a legislative committee.

The law reform commission is attempting, in a very roundabout way--as we carry on through this report we will find that out--to protect the rights of people who, for example, may appear without counsel before a committee.

11:30 a.m.

Mr. Rotenberg: They are doing that within our present act. I am saying we should also consider whether to change the act.

Mr. Chairman: All right. I think we should carry on this morning. At the next meeting when we discuss this report, we should have somebody here--legislative counsel and the clerk, the person who has been involved in compiling this report--so there can be some clarification to ease some of the concerns expressed this morning.

Mr. Charlton: As well as some legal direction for the changes we may want to make.

Mr. Chairman: Yes.

Mr. J. M. Johnson: Would you ask them to look specifically at recommendation 20(c)?

Mr. Chairman: Is that one of the recommendations?

Mr. J. M. Johnson: That is on page 126.

Mr. Treleaven: This whole thing is a series of legal opinions as to what its state is right now. Jack was asking me about it. It is a pretty wishy-washy thing. It is the opinion the Ontario Legislature probably has the right to pass legislation dealing with prosecution under subsequent proceedings. But it is probably.

Mr. Breaugh: We are not sure.

Mr. Treleaven: Yes, we are not sure we have the right to pass legislation dealing with subsequent prosecutions. They are a little wishy-washy there.

Mr. Breaugh: While you are at it, there is one other point that occurred to me in reading this when I happened to take a look at the new constitution. I am not certain that we are not, as a legislative committee, in violation of the constitution of Canada now if we do not inform people of their rights and obligations when they testify.

I would like someone to give us a legal opinion on that. It strikes me that if a cop has to inform somebody of his rights on the street, I cannot see how we do not have the same obligations here.

Mr. Charlton: It would be rather sad to see the Ontario Legislature brought up on charges under the constitution.

Mr. Rotenberg: What I would like to see is some counsel or someone else coming before us. Everything in this book keeps talking about witnesses. I do not consider a person who walks in off the street and sits down in a legislative committee to be a witness. They are a deputation. I want to know if we can make that distinction.

That is a basic, fundamental question because a person who is not a witness is not subject to it. You do not have to read him his rights and obligations. He does not have them in the same way. He should not have any more rights or obligations in talking to me sitting at this table, as a deputation, than in talking to me out on the street and giving me an opinion of the Planning Act. He should have the same rights and obligations and no more or no less.

Mr. Epp: Just a moment. Before you get carried away with this whole thing, you are talking about the Ontario Legislature or any legislature in the country. You are not talking about having just any meeting downtown.

Mr. Rotenberg: I know.

Mr. Epp: People do not just walk in here off the street and make some kind of deputation or appear as witnesses. They prepare themselves and they know they are coming to the Ontario Legislature.

Mr. Rotenberg: Right.

Mr. Epp: They are not just going downtown to chat over coffee. You are mixing the two up completely. I do not share that view.

Mr. Rotenberg: I do not want to put something into our laws that will intimidate those people and make them afraid to come here because of what might happen to them. I do not want to cut off anybody's right to come here.

Mr. Chairman: Okay. We can handle that point at our next meeting when we have counsel. Carry on.

Mr. Eichmanis: In relation to the affirmation that the commission recommends, the commission also recommends--in the middle of the paragraph on page 21--that the clerk of the committee be given statutory authority to administer that affirmation.

Then on pages 22 to 32 the commission deals with the question of the powers of the committee or the assembly to compel a witness to appear and to answer questions. The reading of the commission is that the assembly has absolute and supreme power in this regard. One cannot refuse to answer a question on the basis of self-incrimination.

Mr. J. M. Johnson: Does it recommend the fifth amendment?

Mr. Breaugh: I want you to pay specific attention to their comments on the status of civil servants, public servants and ministers of the crown. That is kind of neat.

Mr. Eichmanis: Yes, under the act, they also do not have a right to refuse to answer a question or not to appear and so on.

Mr. Treleaven: Now, that is where we should introduce a different standard.

Mr. Breaugh: Yes, that is where the Premier (Mr. Davis) would be in real trouble.

Mr. Treleaven: Norm Sterling would like a different standard right there, wouldn't he?

Mr. Eichmanis: But the commission points out that although legally everyone has to answer if the committee or the Legislature

so wishes, that traditions, conventions and so on may, in fact, blunt the enthusiasm of the committee or the Legislature in pursuing the answer or the person or the document.

What it is saying is that on one hand, legally they cannot back away from answering the question. On the other hand there are conventions, traditions and so on in a parliamentary system that would blunt the use of the full legal power of a committee. In the last analysis, yes, the Legislature has the power to compel any witness to appear and to answer questions but that the political nature of the process will tend to blunt the full use of that power.

Mr. Rotenberg: Mr. Chairman, that is a little different to the previous discussion. There are almost two different kinds of questions asked of ministers or civil servants. When you are sitting in estimates and the opposition is probing to try to score some political points and the minister is trying to dodge questions, I think it is legitimate for the embarrassing questions to be asked and it is legitimate for the embarrassing questions to be dodged.

On the other hand, if you have a minister or a civil servant or a Re-Mor type person sitting here, that is a different situation. It is much fuzzier as to whether you can distinguish between those two kinds of things or not, either. If we, as members of a committee, are sitting around a committee table and no one can compel us to answer a question, why should a minister who is also a member of this Legislature be compelled?

Mr. Treleaven: Really, we have one set of protections for good guys and one set of protections for bad guys. We will classify them and then just have two lists.

Interjection: We will put Rotenberg in--

Mr. Epp: A classification system.

Mr. Treleaven: That is right, good guys and bad guys.

Mr. Epp: It is a bit more than that.

Mr. Rotenberg: It is not good guys and bad guys, it is when the committee is sitting as a quasi-judicial body or when the committee is sitting as a legislative body. That is where the distinction comes. There are good and bad guys in both situations.

Mr. Epp: You can go from A to B, from B to C and back to A. I think he is trying to make work for lawyers.

Mr. Treleaven: Sounds good.

Mr. Chairman: Listen, gentlemen. Hansard is having a very difficult time in recording our comments. So, if we would just talk one at a time, it would help.

Mr. Epp: Would you please speak into the microphone, Mr. Chairman?

Mr. Chairman: I am, aren't I?

Mr. Eichmanis: On page 27, the commission deals with the question of the oath that the civil servants must take before they get paid which enjoins them not disclose any information subject to any legal requirement. The commission argues that, in fact, were a committee to require the person to answer the question, that would constitute a legal requirement and, therefore, the civil service oath is not in conflict with the Legislative Assembly Act. The civil servant cannot hide behind that oath.

Similarly, the ministers of the crown take an oath as well, the executive council oath, which enjoins them not to disclose certain things that go on in cabinet. That, as well, would not be a defence.

Mr. Rotenberg: What you are saying then is that, technically, in an estimates debate, a member of the opposition can ask a cabinet minister to reveal cabinet documents and he is obliged to do so?

Mr. Eichmanis: Legally, under the present wording of the Legislative Assembly Act, that is correct. But as I pointed out before, because of the traditions and conventions of the parliamentary system, it is clear to everybody recognizing those traditions that they would not ask those questions. But legally, yes.

Mr. Rotenberg: It would be interesting if a member of the opposition in an estimates debate did ask a cabinet minister the question, the minister refused and the opposition member went to court under the Legislative Assembly Act and the judge might so order. I do not know.

Mr. Charlton: It is not a question of the court--that is what John has made clear. If the minister refuses, it is up to the committee to recommend action that can only be taken by the House. Obviously a minister of the crown, at least in the present context, has the votes to see that does not happen.

Mr. Breaugh: He can thwart justice?

Mr. Charlton: That is where the tradition and convention comes from.

Mr. Breaugh: Stacked court.

Mr. Rotenberg: Can someone go to court pleading natural justice, despite what it says in the act? It might be interesting if someone wanted to go into it.

11:40 a.m.

Mr. Treleaven: It would be different under a minority government. Not having been around for one, I suspect it would be a stickier question than Mr. Rotenberg has put if you have a minister of the crown refusing to answer and the House was a minority and the House then ordered him to give that information. That would be a stickier situation.

Mr. Charlton: The conditions and the conventions to which John is referring and kind of tactics that that boils down to is that, on occasions when the opposition made threats like that during the minority parliaments between 1975 and 1981, the threat was always that that matter would be taken as confidence and that that threat tempered the opposition's ability to deal with the specific question at hand.

Mr. Epp: I think the other point that has to be raised is, what does the Constitution now say on this particular point? Do we have to take into consideration traditions and precedents and so forth?

Mr. Eichmanis: No. those are just that, traditions, conventions and so on. They operate in a political context, and, politics being what it is, it is a matter of negotiation. It becomes a matter of how much does one want to give in and so on.. But legally the power is there under the present Legislative Assembly Act. The legal power is there.

I think it should be pointed out that the strategy of the commission in this report is to balance the legality of things with the fact that all this operates in a political forum and process, and what it is trying to do is to point out that the political process will in some instances, where the power seems to be absolute, be blunted by the fact that people will respect those traditions and conventions.

Mr. Rotenberg: Is there any way we could formalize those traditions and conventions in our act? That is the sort of thing I am trying to get at.

Mr. Eichmanis: Of course. You can change the act. The Legislative Assembly Act can be changed by the assembly.

Mr. Rotenberg: No, the other way around.

Mr. Chairman: Carry on, John.

Mr. Eichmanis: On page 32 it deals with the question of crown privilege, and this is a right of common law which the ministers, and in some cases civil servants can invoke to refuse to answer, provide information and so on.

The commission points out that this ordinarily is claimed in the court proceeding, and that ordinarily this would not be available to the minister in a question where he has been asked to produce a document and so on in a committee, and therefore that the crown privilege does not constitute a legal impediment to refuse to answer a question, because section 35 overrides crown privilege.

Mr. Rotenberg: Section 35 of which?

Mr. Eichmanis: Of the Legislative Assembly Act.

Mr. Rotenberg: I remember when we were in Westminster, somebody asked the question of the British members about asking these kinds of questions. It gave us almost a shock that anybody

would even consider trying to pry this information out of a minister of the crown. I do not know if the act is different or that they just have their traditions.

Mr. Eichmanis: Well, their traditions are much stronger. It is question of tradition and convention, not of legality. They simply respect those traditions or hold on to them much more closely.

Mr. Chairman: Was it not in the Re-Mor inquiry that there was a Speaker's warrant issued to have a federal civil servant appear before the committee?

Mr. Charlton: No, the Speaker's warrant dealt with the documents.

Clerk of the Committee: No, the committee requested that a Speaker's warrant be issued. Oh, yes, pardon me, for two civil servants Speaker's warrants were issued. I was thinking of the senator, where it was refused. But there is the argument before the committee by counsel to the two federal civil servants and to the minister that the committee, or the Legislature, did not have the power to compel the attendance of officials of another legislative body, another jurisdiction.

Mr. Chairman: Was there a result?

Clerk of the Committee: The proceedings were initiated in divisional court, and they were terminated because they were to be heard two days after the election was called.

Mr. Chairman: They did not proceed with it?

Clerk of the Committee: No.

Mr. Chairman: So that matter has never been resolved.

Mr. Eichmanis: If I can continue on page 45--

Mr. Charlton: Was there also a threat of a Speaker's warrant on the production of the documents in the first instance?

Clerk of the Committee: Not the federal government documents.

Mr. Charlton: No. When the original debate was going on in the House, before the committee started, was there not at least the threat of a Speaker's warrant being issued for the release of the documents from the ministry?

Clerk of the Committee: There was a warrant issued by the Speaker and it was all-encompassing because it applied to every document in the possession of the ministry, and any of its agencies, boards and commissions relating to the Re-Mor case. So there was not any restriction on types of documents or anything like that, cabinet documents--

Mr. Charlton: No, the restrictions that were ultimately put in place were by agreement, as opposed to--

Mr. Chairman: By a subcommittee.

Clerk of the Committee:: Yes, by a subcommittee reviewing the documents.

Mr. Eichmanis: It may be a matter of interest in relation to the assertion of crown privilege that in Australia a chap by the name of Sankey brought an action against the former Prime Minister, Whitlam. He contended that he had violated the Australian constitution in some matter and part of his defence required that various cabinet minutes and so on be produced.

Of course, Whitlam argued that crown privilege should apply to those documents. The court struck that down, saying that in fact Sankey had a right to those documents, so crown privilege now is being tested in the courts and has been found to be wanting in some instances.

Mr. Mancini: Now you are talking our language.

Mr. Treleaven: You do not need a freedom of information act, you see.

Mr. Mancini: Just keep everything secret.

Mr. Treleaven: No, just take it to the courts. Open books.

Mr. Eichmanis: I may point out, though, that the commission does suggest, obviously, that the situation is far more complex, and in the second paragraph at the top of page 45 it says:

"Before we leave the subject of crown privilege, we wish to anticipate briefly a later discussion in this report. In many instances the assertion of crown privilege arises not so much from a wish to keep certain evidence secret vis-à-vis a legislative committee, but rather from a legitimate wish to keep that evidence out of the public domain. In this connection the commission will consider below the use of in camera proceedings and the nonpublication of sensitive or confidential material that frequently forms the subject matter of a claim to crown privilege. By means of these procedures, a compromise may be more easily effected between the need for legislative committees to have adequate information and the need to prevent certain kinds of evidence from getting undesirable public exposure."

So what it is suggesting is that although a minister cannot claim crown privilege, the political process being what it is, there are obviously legitimate reasons why a piece of information should not be made public; however, if the committee insists on getting that information there are other avenues open to it to ensure that that document is seen and not made public. It will go on later in the report to indicate how to do that.

Mr. Chairman: Are we going over that?

Mr. Eichmanis: I am doing a very quick summary of the main points. This is all written in legalese and I am trying to distill it into ordinary language.

Mr. Mancini: Mr. Chairman, I am sorry we ever sent our report to the law reform commission.

Mr. Eichmanis: On page 45, section 5, on penal sanctions: The general conclusion in that section is that the assembly rather than the court should initiate court proceedings; on the whole matter of how to enforce some action, that this should not be the matter for the courts, but should be for the Legislature itself to resolve. Because the Legislature being a political forum, various contending interests and points of view will be expressed, and the debate will be far more open and wide ranging than anything that a court could produce. In a court the interests that have to be raised are far narrower than in a legislative assembly.

So basically it says that the sanctions should be imposed by the assembly.

Mr. Chairman: What about conduct in respect of which sanctions may be imposed? Is that in the report?

Mr. Eichmanis: Yes.

11:50 a.m.

Mr. Rotenberg: May I ask a question? When a witness sits at this table he takes an oath and he is under all sorts of obligations and if he says anything wrong he is subject to prosecution. But what about the lawyer for the witness who sits here? Is he also under the same obligations of being before a committee? As a lawyer he might say things and lawyers, as we know, sometimes say things on behalf of their clients--

Mr. Epp: No, he can lie as much as he likes.

Mr. Rotenberg: In court a lawyer can lie as much as he likes.

Mr. Treleaven: Right now it is my understanding lawyers have no capacity to make any statement of any kind; they have no capacity whatsoever in this room.

Interjections.

Clerk of the Committee: Committees have allowed lawyers to make an objection.

Mr. Treleaven: I understand from this report, however, the lawyers can be excluded. There are no rights to lawyers right now to even accompany their clients into the room.

Mr. Chairman: No, but they are recommending the right to counsel.

Mr. Treleaven: Right.

Mr. Chairman: This report is recommending the right to counsel.

Mr. Treleaven: But Mr. Rotenberg was asking what is the present situation regarding lawyers and I was giving my opinion, that they have no capacity.

Mr. Chairman: But do not forget you are talking about investigatory proceedings of a committee. This report deals with both administrative and investigatory proceedings. If a lawyer is here representing a client and presenting a private bill and he makes a submission, he would be subject to the same rules.

Mr. Charlton: At the discretion of the committee.

Mr. Treleaven: Of course, and if the Canadian Bar Association sent in three or four solicitors to assist a committee with the government legislation, they are either witnesses themselves per se or they are coming in a representative capacity as counsel. In either case they are totally subject to the rules of this committee.

Mr. Rotenberg: Whether they are counsel for a group or not, they are still witnesses when they open their mouth. Is that correct?

Mr. Treleaven: That is right.

Mr. Mancini: Do you mean that during the Re-Mor scandal when all those witnesses came in and had their lawyers at their sides, that the committee could have said, "You cannot have your lawyer with you"?

Mr. Treleaven: Correct, "Out, you have no capacity to open your mouth."

Clerk of the Committee: At the beginning of the Re-Mor hearings there was a set of guidelines adopted by the committee giving the witnesses before the committee the right to counsel and the right to counsel to object.

Mr. Mancini: That is too bad, I was not aware of that.

Clerk of the Committee: That was done with the Ontario Highway Transport Board report review and other matters.

Mr. Breaugh: You may recall as well that when we heard the privilege case of Mr. Riddell it was the committee that decided we would recognize counsel and, secondly, what role we would allow counsel to play. It was clearly within the committee's jurisdiction to do that. At that time we said that both parties had the right to be represented by counsel, they had the right to make submissions to the committee, but they did not have the right to cross-examine, and we stuck with that all the way through.

My reading of this report questions whether that was proper or not. I sense an argument in here that if you allow them to have the right to counsel that means full right of counsel and that is cross-examination. We said no, and in most of our committees here with which I am familiar that has generally been the practice. You can have counsel with you and he can assist the individual in

testifying before a committee, guide him as to what questions he answers or does not answer and how he does that, but the lawyers do not have the right to cross-examine because that is the line where we say, "Then you are becoming a member of the committee; only the committee has the right to cross-examine."

Clerk of the Committee: However, I think in the past committees have stated that there is nothing preventing counsel to a witness from going to a member of the committee and asking that member to put the question for him. I think that has been done in a number of cases.

Mr. Breaugh: Yes.

Mr. Eichmanis: On page 51, the bottom paragraph; the commission makes recommendations for expanding subsection 45(1) of the Legislative Assembly Act. The new class of conduct for which you could be penalized are: "(1) to escape from custody, after having been apprehended pursuant to a Speaker's warrant; (2) knowingly to attempt to dissuade or prevent a person obeying a Speaker's warrant or a request by a committee to appear before it; or (3) to cause, inflict, or procure any violence, punishment, damage, loss, or disability on or to a person on account of his having appeared as a witness or on account of any evidence lawfully given by him."

They make a recommendation that that be added to section 45(1) of the Legislative Assembly Act.

Then on 52 and 53 the commission deals with the question of the nature of sanctions and recommends that, in addition to the existing sanctions available to the assembly, consideration be given to the imposition of a fine instead of imprisonment. It thinks imprisonment is too harsh in most instances.

On pages 54, 55 and 56 the commission deals with Speaker's warrants and makes the general recommendation that a committee should be able to get a warrant from a Speaker directly, whether the House is in session or not. Presently Speaker's warrants are automatic--the committee can go directly to the Speaker if the House is not in session. They are saying that should be general whether the House is in session or not.

Clerk of the Committee: That is only the powers given by the House, usually just before the House is adjourned for the summer or prorogued.

Mr. Breaugh: That has been our practice.

Mr. Eichmanis: They are saying that should be universal now. They indicate in the last paragraph on page 55, some of the ways the Speaker can contest or bring what he feels is improper use of the Speaker's warrant before the House.

I may add Mr. McMurtry has forwarded to the committee his concerns about this section of the report.

Mr. Chairman: Which section is that?

Mr. Eichmanis: The section dealing with Speaker's warrants.

Mr. Breaugh: If I could make a suggestion, I sense the committee is a little confused on this piece of business, perhaps understandably. I would like to suggest that we do one more session of the general nature where we go through the remainder of the report and perhaps deal with the correspondence from the Attorney General's office--in other words, have one more general session about this--and then move to a process of bringing in, in a formal sense, legislative counsel here, representatives of the Attorney General's office and the clerk's office. Then we can try to move as expeditiously as possible through the remainder of it.

I do sense there is a need on the part of a number of members of the committee to spend a little more time in general discussion.

Mr. Chairman: I think it is important between now and the next meeting that we all, in our own time, go over this report and read it so we may clarify in our own minds some of the conflicts we have. We may be unduly concerned about some of the text of the report that really does not reflect in the recommendations. I think the crux of our concern this morning has been this difference between an administrative type of committee meeting and an investigatory type.

It would appear from the balance of this report dealing with penal sanctions and Speaker's warrants and things of that nature that we are talking basically about the investigatory type of committee meeting. I do not think we are going to have very much objection from committee members, although we want to go into the detailed aspect of it and have counsel here to answer any of our questions.

I think the important thing is that we have got to somehow resolve the difference between the very practical process of an administrative hearing as Dave Rotenberg and Jack Johnson have discussed, and the type of investigatory committee meetings that standing committees have been handling in recent years. More than I can ever remember, this has been done in the last couple of years.

I am not talking necessarily of select committees because select committees are all investigatory. We are talking about a standing committee or a committee where the general public comes in and makes submissions as delegates. This is what we have to resolve some time.

12 noon

Mr. Breaugh: Could I perhaps make just a couple of comments too, because I apologize for having to leave for another meeting.

Would it be possible to have before the next committee meeting, a legal opinion from legislative counsel on the status of witnesses before committees here in relation to the new Constitution of the country? It strikes me we may have stumbled into a small point where there is a conflict between our practices here and the

new Constitution. We should attempt to get a legal opinion on that as quickly as possible.

The other comment I would like to make is that I think--if you have not had a chance to go through it--the report from the procedural affairs committee states the problem before us in less legal language. There were several members of the committee who were not here when that was put out, and that might be of some assistance to you.

Mr. Eichmanis: If I may make another suggestion, would it be helpful at all to the committee if Smirle Forsyth and I try to summarize the report in less legal language, and have that before the committee?

Mr. Breaugh: Yes.

Mr. Charlton: Very much.

Interjection: It needs debate on that.

Mr. Rotenberg: It causes me some concern. If we are an investigative committee, if we are going to investigate the government, that of course is from the purview of the Legislature. We can have things like what we had in the justice committee three or four years ago, discussing the then chairman of the Ontario Highway Transport Board and allegations of bribery and corruption and so on.

I sat as a substitute on that committee hearing. I had a lot of personal trouble with a committee of this Legislature sitting and hearing what in effect were criminal charges, involving people other than members of the Legislature, even though one was a civil servant. This is something you may look into on the basis of the Constitution and the new Charter of Rights.

I have a lot of trouble as a member of the Legislature, not as a lawyer and certainly not as a judge--our lawyers are certainly no judges--having members of this Legislature, which is a political body, sitting in on what might be a criminal matter. Re-Mor was a little bit of both. What our civil servants did I have no quarrel with, but when you got into what other people might have done--of course, it was before the courts.

I have philosophical problems about this Legislature having the power to investigate what are really criminal activities of people who are not civil servants and even of those who are civil servants.

I do not know just where we stand on it. You said, Mr. Chairman, that we have been getting a lot more inquiries out of this Legislature which arise, in the higher sense, from political motives. But they stray into matters which worry me from a civil rights and civil liberties point of view and from the rights of other people out there.

I do not want to be critical of any particular person, but a chairman of a committee certainly is not trained as a judge would be

trained to protect the rights of a witness, or the rights of a witness who really is an accused. As I say, having sat through one of those things, I was very disturbed. As we go through this--maybe, John, you can have some comments on that.

Mr. Chairman: I think it is important, and particularly in that committee meeting that you are talking about, Mr. Rotenberg, that there should have been some terms of reference on what the committee was there to find out; not to wander the way it did without having the basic rules of evidence.

Mr. Rotenberg: I am not speaking with disrespect of him, but the chairman of the committee and the members of the committee, just because of who they were, could not protect the rights as a judge would in court. If we drift further along in these things--I look at some of the American committees. It is murder as to how witnesses get treated and how reputations can be hurt, because there is no protection as there is in a court.

Clerk of the Committee: Part of the problem, Mr. Chairman, as pointed out, is that when you are dealing with annual reports there is a tendency not to have any precise terms of reference so people can move all over the place.

Mr. Rotenberg: I do not mind getting into all kinds of things about civil servants doing their job properly or not. It is when we stray into what could be possible criminal charges against someone, which we have strayed into a couple of times--

Mr. Chairman: In a situation like that, as we have seen in the Re-Mor hearings, when that witness has counsel, even if you have a weak chairman, if that counsel says to the witness, "Don't answer that question," there should be no recourse against that witness for not answering that question if it does not come within the term of reference of that committee hearing.

Mr. Rotenberg: That may be, but the terms of reference of the committee hearing may be such that the person, even with his counsel there, is not protected as he would be by a judge who is in a court of law on a criminal charge.

Mr. Eichmanis: If I may just speak to that for a moment: I think one of the things the commission raises here is the dilemma or the general problem where you have these wide powers given to committees of the Legislature under the act, to attempt to further certain political processes, if you like. On the other hand you have procedures which appear to be court-like and which really reflect the court situation.

It seems to me you are always going to be in this dilemma of, on the one hand, valuing the political process and what it is attempting to achieve and, on the other hand, valuing the rights of individuals and how they could be protected under a court-like procedure. I think it is very difficult, as the commission points out, to try to balance those two values in a way that you serve the political process and at the same time you protect the rights and so on of individuals.

Mr. Rotenberg: If I had my druthers--this is going to be a little extreme and I am not sure we could do it--I would say that a legislative committee can never sit in the court process, it can only sit as a legislative process, or investigatory, but not a court. I do not know if that line can be drawn or not.

Mr. Chairman: Investigatory meaning--

Mr. Rotenberg: Investigatory means investigating the conduct of civil servants in the political process doing their thing, but not investigatory when you get into a situation where there are possible criminal charges. I would take the Legislature right out of that process if we could.

Mr. Treleaven: But where would you end in practice, where would you ever stop off? You would start going down the trail and where would the invisible line be? How could you determine ahead of time you can go that far, but no further? It is totally impractical.

Mr. Rotenberg: It is a problem, but I say philosophically you have problems with it.

Mr. Chairman: That was done in the Re-Mor hearings. As some of you will remember, there was a subcommittee and we were concerned about sub judice, particularly in respect to certain criminal charges that were being made against people involved in the legislative hearing. Time and time again, the government counsel from the Attorney General's office would stand up and say, "That question is not proper because," or, "It is outside the terms of reference of this committee as agreed to by the all-party subcommittee of this standing committee." So there was an opportunity for committee members to be told that question is sub judice, it is beyond the terms of reference of this inquiry and we would request that it not be answered.

Mr. Rotenberg: There are two points in that. One is that some people were already under charge in court so there was sub judice and, secondly, the committee set up the terms of reference which--I was not there, but which seemed to be reasonable. There are other cases, and I go back to the Ontario Highway Transport Board thing before the justice committee, where there was nothing sub judice, there were no terms of reference and it was free rein.

Mr. Chairman: That was the trouble.

Mr. Rotenberg: What I am trying to indicate is possibly, rather than each committee setting up their own terms of reference, maybe there should be some guidelines or something in the legislation which makes it mandatory for a committee not to be able to stray beyond, if we can draw that line.

Mr. Chairman: Even if we have some rules that say such a committee has to have terms of reference--

Mr. Rotenberg: There should be rules rather than just leaving it up to each committee because, again, if you make that into a minority government situation--I might be a member of the other side too--where for political purposes you want to get

somebody's scalp and it looks like you have a good scandal, away you go. Maybe it is I. I just do not feel, as an elected member of this Legislature, I am ever qualified to sit as a judge, or to sit in judgement of a person's conduct beyond what he does as a member of the Legislature or with government. I am in no way qualified to sit as a judge or as an investigator into criminal matters.

Mr. Treleaven: Mr. Chairman, I have two matters. Firstly, Mr. Rotenberg and I are on the same wavelength; we are on different ends of the wavelength.

You pointed out that on Re-Mor the committee itself arranged its own business and decided its own guidelines and parameters on an individual basis. I am saying that is quite correct and quite in order because the committee arranges its own business. But what I am saying to Mr. Rotenberg is, I do not believe that ahead of time you can set up any arbitrary rules that will cover all situations and say you can go so far and no further. I am saying it has to be up to the individual committee.

Secondly, you pointed out that the crown counsel stood up and advised that it was getting into the area of sub judice. However, that was only advisory. That committee could still have said, "Thank you, Mr. Jones. However, we are going to keep barrelling on." It was only advisory. There is no guideline and no definite line put there that restricts any committee from carrying on.

Mr. Chairman: I understand from Smirle that in a case such as that, when the advice of the crown counsel was not accepted, the committee would then adjourn that particular line of questioning and allow our subcommittee, that was part of that committee, to decide in itself whether in fact that line of questioning was sub judice and should proceed.

12:10 p.m.

There is no question that there was a great deal of co-operation between the all-party members of that committee because a lot of submissions and representations were made by the Attorney General. The function of this committee could very well prejudice not only the criminal trials but the civil actions that were going to result from that whole fiasco. Because of the responsible nature of many of the members of that committee--I am not going to say particularly the legal members--

Mr. Rotenberg: Mr. Chairman, you are absolutely correct, but the next time there may be some irresponsible members on the committee who may not go along with it. I think we have to put something in the act.

Mr. Chairman: I know. That is why I cannot see any reason why you could not have general rules applying to a standing committee that is conducting a hearing of an investigatory nature that it be required, before the committee hearings start, to set out certain terms of reference with respect to that matter.

Mr. Treleaven: Mr. Chairman, you are going to have real trouble trying to define what is investigatory and what is legislative, and I do not think--

Mr. Chairman: One Speaker's warrant makes it investigatory.

Mr. Rotenberg: We can have our staff see if there is something we can do about that. I think you may be right, but at least let us look into it and see if we can put something on paper that might help.

Mr. Piché: Mr. Chairman, has this been a problem in the past? We have enough rules right now and common sense should prevail in cases like that. The members around this table should know what they can ask or not, whether they are lawyers or not.

If you start to put too many rules in, the function of the Legislature will be lost completely. I think we had better follow this very closely. Before you start to put rules in, we are here and we are here because we are supposed to know what we are doing. Common sense should prevail in a case like that, at any hearing. We will not have too many items of this nature that come in front of the lawyers and others.

Mr. Chairman: The important thing though, René, is the fact that there has been a lot of controversy about the proceedings of committees that have been holding inquiries. There have been press reports about kangaroo courts and the protection of witnesses and protection of deputations of civil servants and other people. That is what has brought this to a head.

There have been instances, mainly the result of press reports or media, who are in attendance at these hearings, where a committee member may well ask a very loaded question which would be ruled inadmissible in court, that has been reported in the press and the answer has been reported and particularly if there is no answer. We need guidelines and we need these rules. The important thing is to bring in rules, not only for the protection of witnesses--whether you call them witnesses or delegations--and at the same time make sure that the operation of these committees can function without a lot of stumbling blocks and hurdles. In other words, that we do get at the truth but at the same time protect peoples' reputations. This is what we have to resolve here.

Do you want to carry on or do you feel we have had enough for today?

Mr. Epp: Are we going to discuss this next week?

Mr. Chairman: Yes.

Mr. Eichmanis: I will try to do an ordinary language summary of the report, chapter by chapter, with Smirle, so there is a focus for each chapter in plain language.

Mr. Lane: Mr. Chairman, does the new Constitution change anything as far as the bar?

Mr. Chairman: I think it probably does. It probably affects what we are doing here. I have asked Smirle to get in touch with the Attorney General's office and just ask that question: "Is

there anything in the new Constitution that would affect any of the recommendations of the Ontario Law Reform Commission on this matter?"

Mr. Epp: We may all have to go to Westminster again to find out what the new Constitution says.

Mr. Piché: This time I will go.

Mr. Chairman: Thank you very much, gentlemen. We will probably meet a week from today.

The committee adjourned at 12:14 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS
REPORT ON WITNESSES BEFORE COMMITTEES
THURSDAY, MAY 13, 1982



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
Piché, R. L. (Cochrane North PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher

From the Ministry of the Attorney General:

Cavarzan, J., Director, Constitutional Law Branch

Mendes da Costa, Dr. D., Chairman, Ontario Law Reform Commission

Springman, M. A., Senior Legal Research Officer, Ontario Law Reform
Commission

Stone, A. N., Senior Legislative Counsel

From the Office of the Legislative Assembly:

Lewis, R., Clerk of the House, Office of the Clerk

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, May 13, 1982

The committee met at 10:19 a.m. in room 228.

REPORT ON WITNESSES BEFORE COMMITTEES
(continued)

Mr. Chairman: Gentlemen, I see a quorum. At the very start, if you do not mind, you have a budget in front of you that should be looked at and approved before it goes to the Board of Internal Economy.

This involves trips by the committee to Victoria and Washington and some major agency review hearings in both the fall and the winter of 1982-83. It involves about 12 days; that will be two sets of agency hearings. One, as you know, is a week that is set aside for September, and we will probably have a week in January or February of next year.

The budget is approximately the same as the past year as far as estimates are concerned, though the actual budget last year was about \$8,000 less than was originally estimated.

Are there any questions about those budgets you have in front of you?

Mr. Breaugh: I move its approval.

Mr. Chairman: Do I have a seconder for that? It is carried. The clerk will take this to the Board of Internal Economy and we will let you know the results.

Mr. Breaugh: It was our tremendous restraint program that brought us in well under budget.

Mr. J. M. Johnson: Is our chairman going to attend the board hearing?

Mr. Chairman: Yes, the chairman will be there and I hope that certain members of this committee will also be there.

Mr. J. M. Johnson: I would think in my position I would have to abstain from voting. There would be a conflict of interest.

Mr. Breaugh: I think if you abstain from voting you are losing your position.

Mr. Chairman: I think just your presence there, Mr. Johnson, will be a big help.

Mr. J. M. Johnson: I will be there but I will not take part.

Mr. Chairman: Gentlemen, as you know, we are still considering the Ontario Law Reform Commission report on witnesses before legislative committees.

This morning we have a number of people who are involved, either directly or indirectly, in this report. As a result of our deliberations we felt that we needed some information, advice, direction and help from the gentlemen we have here this morning.

We have with us Mr. John Cavarzan, who is the director of the constitutional law branch of the Ministry of the Attorney General; Mr. Lewis, who is Clerk of the House; Dr. Derek Mendes da Costa, chairman of the Ontario Law Reform Commission; Melvin A. Springman, who is senior legal research officer of the Ontario Law Reform Commission; and Arthur Stone, who is, as you know, senior legislative counsel with the Ministry of the Attorney General.

I understand that Mr. Stone has a submission he would like to make, copies of which you should have in front of you, which touches on some of those sections where we had spent a certain amount of time and where we had some controversy and some questions.

Mr. Stone, would you like to step up front and centre, put on your seatbelt and make a few comments? I am sure members of the committee will have some questions.

Mr. Stone: Thank you, Mr. Chairman.

Clerk of the House: Mr. Chairman, I have not had too much of an opportunity to look at this, so if there is no objection I would like to sit in with Mr. Stone.

Mr. Chairman: Fine, Mr. Lewis.

Clerk of the House: And perhaps put in my two cents' worth every now and then.

Mr. Stone: What has been distributed is really the notes of the ground I would like to cover. The general objective of my remarks is to run over the main issues in order to form a framework and focus the considerations that, in my opinion, come to bear. These, in the interests of forming a base, may possibly oversimplify it. There are in specialized areas better lawyers than I am here to further clarify those areas that I have covered in a simplified form.

The first item, on which I see a considerable amount of time was spent in the last couple of meetings, was the question of classes of witnesses. It seems to me that this arises from concern at appearing to formalize the rights and obligations of witnesses. I think that question pretty well disappears if you reserve it until each particular item is dealt with. In other words, it cannot be considered in isolation in any orderly way.

First, the right to counsel: The right to counsel is divided into two main areas. One is simply the right to be accompanied at the meeting by counsel. He privately advises his client as the meeting progresses as to how the matters may affect him in law and how he should respond. That is a fairly standard assumption and a standard procedure in almost any forum. I do not think it needs to be legislated. If there is abuse to the extent that the objectives of the committee and the particular subject matter it is dealing with are being interfered with, that could be dealt with on the spot.

Clerk of the House: If I might interject there for just a moment, I agree entirely with what Mr. Stone has said. The usual practice in our committees over the years has been that any witness appearing before a committee is entitled to have his counsel with him, as Mr. Stone says, to privately advise him. He just speaks to him privately, whispers in his ear as to what he should or should not do. With few exceptions, that is the procedure and has always been recognized as a right.

Mr. Stone: In this case, the witness knows from his own affairs that he is entering a hazardous area. The witness would rarely go to the trouble of doing this. I think he would probably only do it where he felt it was necessary and it probably would be.

The other area is to give witnesses' counsel the right to cross-examine. That is a much more serious right. When that right has been given in other forums, the subject under consideration has tended to get off track. There is a preoccupation with the private concerns of the witnesses for other purposes.

If it is a sensitive subject and you have a lot of witnesses, you can get into chains of eight and 10 cross-examinations on every statement. That was interfering with coroners' inquests at one time, a little more than 10 years ago. The new Coroners Act was made orderly by not having the right of witnesses' counsel to cross-examine, unless the witness was given standing before the inquest because of a specially sensitive interest he had in it. Of course, that is a different kind of hearing than most of the committee meeting hearings, but they did have the problem and that is how they dealt with it.

Mr. Chairman: What about the question of the witness' credibility or reputation, which is dealt with in the report? All those things may arise as a result of direct examination or evidence. Are you saying it should just be left up to the committee's whim as to whether or not that person's counsel should have the right to cross-examination?

Mr. Stone: I think that follows from what is done with the other questions as to protections or rights or obligations of witnesses. If, for example, the immunity from using the evidence in another proceeding were dealt with, then it would not be of such importance to the witness. If it is not dealt with, and there is no immunity, then it becomes very important to the witness to have that evidence usable for another purpose. That gets in the way of the objectives of the committee.

10:30 a.m.

Mr. Chairman: I am thinking of a witness who comes before a standing committee or a committee of this Legislature. The room is packed with reporters and TV cameras. It is an open public hearing and a witness appears before the committee and says certain things about another individual. Does the other individual's counsel have the right to cross-examine that person?

Mr. Stone: In my opinion, the committee ought to be able to assess whether it is of vital concern to his rights in some other respect and grant the right to cross-examine under control.

Mr. Chairman: The right to protection is probably a good phrase here.

Clerk of the House: There are two things I would like to say, Mr. Stone. First, I mentioned before that the usual practice for a witness who brought counsel with him was to just have the counsel advise him. I said with certain exceptions, and those certain exceptions have been, of course, in the very few instances where the right to cross-examine has been granted by the committee. It must be granted by the committee. Otherwise, the procedure is very similar to what is apparently the practice in coroners' inquests.

That was the only way it was done when I was a crown attorney very many years ago. There was never the right to cross-examine by counsel at the coroner's inquest. They had to ask their questions through the crown counsel only, and apparently they have gone back to that. But that is certainly the way it was done in my day, and with those few exceptions, that is the way it has been done at committees here.

As to the point the chairman raised, the committee always has the right to "exclude strangers," which is the parliamentary expression, if they decide it is desirable. If a motion is made to exclude strangers to protect a witness or whatever, and that motion is carried, then everybody but the committee and the committee clerk is out.

Mr. Stone: I really do not think there are too many instances in that forum where the right to cross-examine is the right way to do it. The committee meeting is a unique kind of forum. It is more similar to a public platform or to the House, where something said by one may be rebutted by another who has the opportunity to speak in his own defence.

Mr. Chairman: I also feel the committee members themselves, who are all very intelligent, wise and fair individuals, will do the cross-examining and protect the witness, or at least elicit the necessary information to give some balance to the testimony before the committee.

Mr. Stone: Yes. In a way, it is a public forum for public debate. When you are on a public platform, it is necessary to take what someone else says and to rebut it and to have that have the same prominence. In other words, the committee's procedure does not lead to a penalty or to a particular onus on the witness. He is explaining his conduct or explaining something in a public forum.

Mr. Chairman: It is just the report of those committees' hearings that do as much damage as any possible charge that may result. Carry on, sir.

Mr. Stone: I think, again, that this need not be legislated if dealt with, but is a procedural matter. The Charter of Rights does not seem to apply to override any such decision or any disposition that the committee would like to make of that.

I think the right to counsellors seems, on the face of it, to be confined to where there is a criminal charge. When it comes to right to counsel, again I do not see where it is necessary to make any distinction in the class of witnesses.

There is concern about injunction against committee summonses or other forms of judicial review. It is probably assumed that there is no judicial review of a committee acting within its constitutional jurisdiction.

However, the practice, the recommendation of the commission, with which I agree, is that because of certain residual questions as to the extent to which full parliamentary privileges originating in Westminster have been incurred in Ontario, there has been a tendency to take those and put them in the act. I think that is a subject that might be dealt with in the act, to give an immunity from judicial review, and also in other acts that provide for confidentiality.

I think this was the situation with the OHIP records at one time. The reason for the judicial review, as I understand it--Mr. Cavarzan will know more about this than I do--was based on an act of the Legislature that said these were confidential. It was not based on the jurisdiction, actually, of the committee, but it was already an act of the Legislature.

Clerk of the House: On that point, I agree that it certainly strengthens the wording to put it into the act, but one should not lose sight of the fact the Ontario Legislature is the highest court in the province, and therefore it would be very problematical that any court had the right to issue an injunction against an order of the House, of the Legislature.

Also, it is a matter of interest, arising out of what Mr. Stone said, that actually the Legislature of Ontario has inherited more of the traditional rights from Westminster than Ottawa has. It is recognized that the Legislature of Ontario is a court of record, whereas the House of Commons in Ottawa is not.

Mr. Chairman: Why is that?

Clerk of the House: This Legislature inherited it before the Legislature in Ottawa was created by the provinces, so Ottawa's did not come down direct from Westminster, as ours did. It came indirectly through the provinces.

Mr. Epp: We received it when we were in Upper Canada.

Clerk of the House: Exactly. That's what it basically is, yes.

Mr. Chairman: That is why we are MPPs.

Clerk of the House: Technically you could be called MPs because you are members of the Parliament, but even before Confederation--this is discursive, I know--the members of the provincial Parliament used the extra "P" to differentiate them from the Parliament in Westminster.

Mr. Stone: When it comes to the question of excluding from judicial review--whether common law or statutory--there are, of course, certain matters that cannot be excluded, particularly having to do with the Constitution. This might arise under division of jurisdiction or the charter.

In that respect, federal civil servants, in my opinion, if summoned, would be required by the summons to attend. However, the questioning may become improper by expanding into an investigation of something that is an intrusion into federal responsibility. That would be a very hairy area, but I think that the rule is there.

Whether one is in it or not may well be determined by a court. Again, on this matter there is no question of a class of witnesses because it is predicated on a summons.

10:40 a.m.

Mr. Lane: On that point, it is interesting to me that we can tell federal civil servants to attend, but they would not necessarily have to answer. Is that right?

Mr. Stone: I would say that you may find that if the question is one that appears to be an intrusion into federal jurisdiction--and we have had questions on this with the RCMP investigations and things like that--if he refuses to answer, there may be difficulty in forcing him.

Mr. Lane: Would he have to clarify why he was not going to answer? Who makes that decision, that he should or should not answer that question? That is the thing that bothers me.

Mr. Stone: I think that he would have to take a position and defend it.

Mr. Lane: Thank you.

Clerk of the House: He would have to answer any question that was not an intrusion.

Mr. Lane: I just wondered who made the decision that it was an intrusion, that is all.

Mr. Stone: In the last resort, I think a court has to make a decision on the question of jurisdiction.

Mr. Lane: Okay.

Mr. Chairman: What happened to the justice committee with Humphrys? Did they proceed with the Speaker's warrant in the Re-Mor matter?

Mr. Edighoffer: It was withdrawn because of the election call.

Mr. Chairman: And the new committee did not take it up again?

Mr. Stone: On the question of sub judice, there is a present rule in the Legislature, and I think it is relatively specific. It may be little understood, so I wanted to get back to basics as to what the principle behind sub judice is. It is based on the principle that if someone is already having rights determined in a judicial proceeding, he is entitled to have his case and the other party's case presented under an adversarial system, with the rules of the court, rules of evidence, and procedure applying. Therefore the development of the case in another forum may be unjust.

Also, in the case of the Legislature, announcements and opinions of persons in authority while the case is under way may be seen to influence the court or the jury. Whether it does or not, it would appear that way to the public.

Also, the committee may be used by the parties as a forum for tactics in their court case. They can develop evidence there, put their opponents off balance, and other things which would not be developed in courts where the court rules and which they would not otherwise be able to do.

The rule is one of justice in particular cases, which I think is virtually impossible to codify ahead of time, as long as these principles are kept in mind. Again, it applies to all witnesses, people.

On the question of self-incrimination: I believe at the time the Ontario Law Reform Commission report was written, the charter was not final or in place. There is the assumption in it that we are under the old law, although there is definitely mention made that the charter would make a difference.

In my opinion, section 13 of the charter, if read as plain language, should preclude the use of evidence in a criminal or provincial offence proceeding if it plainly applies to a criminal proceeding. There may be arguments where it may be extended or something in the future, but I believe it is right for the Legislature, at this point, to recognize it on its plain language.

Mr. Chairman: In the situation where the accused takes the stand and makes certain statements as to his innocence and noninvolvement in the case at hand, certainly the crown counsel would have the right of cross-examination to try and incriminate that person, would he not?

Mr. Stone: If he takes the stand before the committee?

Mr. Chairman: No, I am thinking about your reference to clause 5(a). Are you talking about the court or are you just talking about this committee?

Mr. Stone: Oh, no, in any proceeding. The charter would

apply to any proceeding, whether it is in one trial and used in another or before this committee and used in a trial.

That gets back in criminal cases to the original common law. The original common law was that it could not be, that there was the immunity. The section put in the acts that purported to protect the witness really took the immunity away. He has to answer but he can recover the immunity by being given a certain warning.

Clerk of the House: A parliamentary rule we inherit from the United Kingdom is that witnesses appearing before committees have the exactly the same immunity as the members of the Legislature themselves.

Mr. Chairman: That is the same as in the Legislature? The same as in the House itself?

Clerk of the House: Yes, in committee or in the House. The immunity from action for slander or libel, or whatever, in the House applies also to committees and a witness appearing before a committee has exactly that same immunity that the members have.

Mr. Chairman: Okay.

Mr. Stone: The other branch of immunity from the use of evidence in another proceeding arises for civil proceedings. I submit that is still open to legislation or otherwise by the province. In a way, in my opinion, it is a fair thing to crack and probably does not make a lot of difference to the committee.

The committee proceeding has an entirely different issue than the party will have in his case in court and therefore there is some injustice maybe in transferring answers to questions in one forum for one purpose into being applied under another set of circumstances. Although courts would take this into consideration, it would still be probably something that might be granted in the act.

However, barring the use of the evidence only applies to using the fact that he said this or that on that occasion. What happens if there is no immunity is that one of the parties to a court action--this would be a civil court action--could, having the party in the box in the case, produce the transcript of his answers to the committee and, after getting his evidence, ask him, "On this other occasion, were you asked this question and did you give that answer?" which may in some respects contradict what he already said. That would tend to attack his credibility.

10:50 a.m.

That is the main extent of the use that evidence might have in another action. However, if the evidence given before the committee is not under oath, it would be given little weight and it is much easier for the witness in the court case to have it disregarded or not given much weight. The contradiction is not as serious.

Again, as to exemptions by the assembly, this question seems more attractive where there is a criminal situation that the

assembly feels strongly about. But if that is ruled out by the charter, it is difficult to imagine a case where evidence given in committee could be used in its exact form as a key factor in a civil action that the assembly would like to see taken. If there is an exemption, it would have to be a matter of such public importance that the procedures of the assembly could be put in motion for the purpose of giving an exemption.

Probably the assembly making an exception would be of very little likelihood or very little use in the case of civil actions only. You must remember that the ban on the use of evidence before a committee would totally preclude libel or slander actions. The actions themselves are based on the words used on a particular occasion and if you could not use that then you have no action.

I just put that in because the net result may be to prohibit libel and slander actions anyway, but one must keep in mind that if they are going to be allowed, the immunity must be taken care of as well.

Again, in my opinion, there should be no distinction between classes of witnesses in the case of self-incrimination. When it comes to slander or libel, it seems to be the law, particularly in England, that there is no action for libel or slander against a witness before a parliamentary committee. The law reform commission report agrees with that but does indicate some doubt based on American cases. I am not able to judge how seriously to take that; however, again, it may be a matter that ought to be set out, even if obvious, with other things in the act.

If there is to be any slander action permitted, even by special exemption, then my fifth point here for immunity for what was said would have to be qualified. Publications of the assembly, that is, the transcript of the proceedings and the rest, are, of course, immune from libel action. It is already well established and I believe it is in the Libel and Slander Act.

As far as penalties at present are concerned, section 45 of the Legislative Assembly Act sets out obligations and conduct and breach of them is a contempt of the House. That includes the obligation to tell the truth. That is available now, but how do you enforce it? It is not automatically invoked. It is not the kind of thing on which the law enforcement agencies can decide to proceed against you. It has to be initiated. It has to be of such public importance and such importance to the members, that it would probably be initiated by a resolution in the House.

Clerk of the House: Yes. I would think so. It certainly would be considered a contempt of the House. I would think the correct procedure would be for the committee to recommend, by a report to the House, that this person be brought before the bar of the House and charged with contempt. It would not matter whether he was sworn or not sworn. If he lies to a committee, it is a contempt of the House.

Mr. Watson: Pardon my ignorance. What do you mean when you refer to the bar of the House?

Clerk of the House: The bar of the House is just inside the chamber. If you look in the chamber--

Mr. Breaugh: It is upstairs on the second floor.

Clerk of the House: If you are looking in the chamber today, you will see two very ornately carved posts. That is the bar of the House. If an offender were brought before the bar of the House, he would be brought to the outside of that bar, accompanied by the Sergeant at Arms and he would be on trial, as it were.

Mr. Breaugh: Usually in chains.

Mr. Watson: Maybe I should not digress too much, but has anyone ever been brought before the bar of this Legislature?

Clerk of the House: The last time it happened was a long time ago. I was told about it years ago by a very old gentleman who was here at the time. It happened a very long time ago. He was a member of the press gallery at that time. Hector Charlesworth became a very distinguished editor later on. He was editor of Saturday Night later on.

Mr. Epp: Is there a connection there between coming before the bar of the House and becoming a successful editor?

Clerk of the House: When he was a young journalist in the press gallery, he wrote a scurrilous article about all the House generally.

Mr. Watson: Things have not changed much.

Clerk of the House: One of the members took this up as a contempt of the House or a breach of privilege. As I was told, he was not actually summonsed. The Premier of the day, Sir Oliver Mowat, who was also the Attorney General, said he would speak to Mr. Charlesworth in the recess and ask him to appear before the bar of the House voluntarily or else he would be summonsed. So he did. He appeared before the bar of House voluntarily. The gentleman who told me, said his legs were shaking visibly and he made an abject apology. He was let off with a reprimand. That was the last time it happened.

Mr. Watson: Are legislators subject to appearing before the bar?

Clerk of the House: Oh, yes. The House has always reserved the right to discipline its own members. If a member did something the House considered to be a contempt of the House, he could be brought before the bar of the House, on motion, to answer for it.

Mr. J. M. Johnson: The Treasurer (Mr. F. S. Miller) will be exempt in presenting his budget, will he?

Mr. Breaugh: What do I have to do to get that to happen?

Mr. Watson: Maybe I am digressing too much but how do you

arrive at a sentence? Is it done by resolution or is it done by act or is it--

11 a.m.

Clerk of the House: It would be done by a resolution of the House. After the evidence is all heard, the Attorney General would probably make a motion as to what the punishment should be. If that were carried by the House, that would be it. They would stick him up in the tower.

Mr. Watson: We are a little different. I am trying to separate this from say a court, where you would have a judge in charge.

Clerk of the House: The House is the court.

Mr. Watson: In our case the Speaker is not--he is the servant of the people.

Clerk of the House: The whole House is the court.

Mr. Watson: So it would come by a resolution or motion probably from the Attorney General.

Clerk of the House: Probably from the Attorney General, yes.

Mr. Epp: Do you have a right to counsel if you are brought before the House?

Clerk of the House: Probably. As I say, reverting back, it has not happened for a very long time. Without having looked into any of the precedents I would guess off the top of my head that you would probably be entitled to have counsel standing with you to advise you. But the counsel would only be permitted to participate with the consent of the House.

Rather than bringing you before the bar of the House, a more likely way of handling it would be to pass a resolution of the House referring the matter to a committee of the House. It would hear the evidence and then recommend what the punishment should be by a report to the House.

Mr. J. M. Johnson: I would like to relate an incident that happened a few years ago in the justice committee relating to Mr. Shoniker, a former chairman of the Ontario Highway Transport Board. In that committee, one witness seriously libelled Mr. Shoniker. Although it was never substantiated, the press played it up.

Our committee called the witnesses to appear before us. One of the witnesses, in my opinion, abused his position and created severe mental anguish for Mr. Shoniker, yet there was no penalty. I was extremely disturbed by it. It was completely out of order and yet there was no action taken that I know of.

Clerk of the House: It is a very difficult thing to deal with because, as we were saying earlier on, a witness is privileged.

I can give you a better example than that. Mr. Bill Common, QC, was the Deputy Attorney General for many years and one of the most distinguished public servants this parliament has ever had. In one of the inquiries some bookmaker, or someone like that, said that someone told him Mr. Common would take money not to lay charges. Hearsay, in other words; someone had told him this. So, of course, one of the newspapers made a big headline of it and all he could do was say it was not true.

Mr. J. M. Johnson: I just feel that if a committee has a right to call witnesses, they should also have the right to protect them from abuse. I wonder if we could not do anything else.

Would it be possible, as in the instance of the Shoniker case, for the committee to issue a statement saying it did not have any supporting evidence of the witness and try to re-establish the credibility of, in this instance, Mr. Shoniker?

Clerk of the House: Yes. That could be done. As I was saying a few minutes ago, that very action could be taken as a contempt of the House. He was lying to the committee. They could charge him with a contempt of the House and bring him before another committee for the evidence to be taken and punishment to be recommended, or he could actually be brought before the bar of the House.

Mr. Chairman: I would think it would be very difficult to prove the person is lying if he is giving hearsay evidence.

Mr. J. M. Johnson: But Mr. Chairman, if he cannot substantiate that what he said is true and this committee or some other committee has requested that witness, then there is a responsibility for the committee to publicly state it has not accepted the evidence as presented.

Mr. Chairman: The best protection is counsel and the right of cross-examination.

Mr. Treleaven: No, Mr. Chairman, you're winging in the clouds.

Mr. Chairman: No. That is where counsel is very helpful, in a situation like that.

Mr. Treleaven: You totally subvert the entire workings of the committee while the solicitor goes off for months on cross-examination.

Mr. Chairman: No. He just cross-examines the witness who made the statement. That is all. It makes him look foolish.

Carry on, Arthur.

Mr. Stone: Just following Mr. Johnson's point, when the committee deals with the question of slander or libel, it would of course be possible to qualify the immunity, to lift it possibly, under some procedure which would involve the House where the

consensus of the House was so outraged that they would feel it would be necessary. That is a kind of protection.

Again, my point on the penalties for contempt of the House is that it requires a consensus by the members of the House before you could proceed. So, there must be a very important public question involved, not something for which one hazards a bolt coming from heaven to strike him because he told a lie. It has to be of such a nature that the House will act.

As far as the administration of oaths goes, in view of the existence in the Legislative Assembly Act of the obligation to tell the truth, only two additional things can be noted.

One, it definitely has a psychological effect and that is why it is administered in courts and why it developed in the first place. Two, it does expose the witness to an additional penalty. It can be an addition to that imposed by the House, I believe. I do not think it is an alternative, again, initiated by the law enforcement administration as a breach of the Criminal Code.

Mention was made of crown privilege. I agree with what seemed to be the general consensus of the committee that, again, the remedy here is also in the House, which has its own justice. Again, in respect of penalties, no distinction between class of witness is necessary and none is now made under the Legislative Assembly Act.

I make some suggestion as to the manner in which decisions on these might be implemented. I think certain things belong in the act, certain things in the standing orders, and certain things merely form part of the report of the committee as being useful for the future as a clarification of usage.

The items in the act affect public law. One is any exclusion of judicial review, any exclusion of evidence in civil proceedings, clarifying anything stated on the law of libel or slander and certain additions to section 45 which the report recommends.

The standing orders may be appropriate to deal with the internal procedures of the House or the committee. The punishment for contempt is now outlined in the Legislative Assembly Act. It may be an opportunity to review that and have a specific procedure, because if a situation arose today--as Mr. Lewis has said--it has been so long that everyone would be scrambling trying to find out how it should be dealt with properly. It might be good to work that out before a case arises.

The procedure for a Speaker's warrant might belong in the rules.

Clerk of the House: Yes. It could be clarified.

Mr. Stone: And the question of what general authority there is for committees to take evidence under oath. The committee's report would be useful to clarify the sub judice rule, general guidelines on the right to counsel--

Mr. Chairman: That should be "of" instead of "or" there.

11:10 a.m.

Mr. Stone: Yes, I am sorry, it should be "of"--and the booklet explaining procedures, which is an excellent idea, and, of course, would depend upon the decisions made.

I hope I am not presumptuous in suggesting the last paragraph, but I was rather struck by disorganization in the--

Mr. Chairman: "One or more members." Is that members of the committee or do you want some fresh opinions?

Mr. Stone: It is always difficult to reach original decisions in a large group. The best way a large group can operate is to have a specific proposal before it and either accept, reject or change it.

Although you have the report, that takes it halfway down the road. The next step would be specific amendments to the act, specific amendments to the orders and maybe an idea of certain wording that might eventually go in a report.

Mr. Chairman: Have the committee members any questions of Mr. Stone?

Mr. Breaugh: I would just like to pick up on the last suggestion that is here because we have had a couple of rather broad-ranging discussions on the matter, to put it politely, and I believe we have to come to some consensus on a few matters.

I think it would be a reasonable thing to proceed in the way that he suggests in his last paragraph here. We have had our generalized discussion about it and I do think the suggestion that a work group be set up to draft the report is the way to go now, to try to clarify.

We have some other people whom I would like to hear from before we strike that committee, but I would suggest that it would be a reasonable way to proceed, to do just precisely what Mr. Stone has recommended in his final paragraph.

Mr. Chairman: Are there any other comments or questions? Thank you very much, Arthur and Mr. Lewis. I would like you to stay around if you would.

Mr. Stone: Pardon?

Mr. Chairman: If you have the time we would like you to stay around and listen to the rest of the discussion, if you have a few minutes.

I think, Dr. Mendes da Costa, if you would come up. I think all three gentlemen, in view of the hour, probably should step up to the podium and we could have the benefit of your knowledge on this subject.

I think one of you gentlemen, and it might be Dr. Mendes da

Costa, has read the transcripts of the proceedings of this committee discussing this report.

You may have noticed a certain amount of controversy, disagreement and confusion, particularly in relation to the sections referred to in Mr. Eichmanis' memo--do you all have a copy of that?--where we have dealt with some rather meaty recommendations of the report and where there has been some substantial rejection, shall we say, of some of the recommendations or suggestions for substantial amendment.

Would you like to start off, sir, and comment on some of the remarks or comments by this committee that you have had a chance to look at?

Dr. Mendes da Costa: Mr. Chairman, thank you very much. I am very pleased to be here on behalf of the Ontario Law Reform Commission to try to answer any questions the committee may have concerning the report of the commission.

The commission clearly has reported and its views are in the report. I hope that I can be helpful to you in clearing up any problems or ambiguities the committee may find. Mr. Springman, our senior legal research officer who was much involved in writing the final draft of the report, is with me.

I think, if I could say this, that throughout the consideration that the commission gave to this matter of witnesses before committees, one major factor we were well aware of was that there is clearly a strong public interest involved--as far as the government of the province is concerned--in the effective working of committees of the Legislature.

We recognized, I believe, that to perform efficiently and to discharge public responsibilities the committees may well decide it necessary and appropriate to call witnesses, to seek all relevant information and to ask for the production of relative documentation.

At the same time we were concerned, as indeed were the earlier reports of this committee, with private interests also involved when witnesses appear before committees. I think the whole issue raises questions of balance between the competing and possibly conflicting public interest in the working of the committee and the private interests of the witness before the committee. What the commission has attempted to do is to make value judgements in its view as to how the balance should be struck.

I might also say that the commission shared the earlier report of this committee that there was a need for some degree of clarity as to the position in the province as to witnesses before committees of the Legislature. What we have, I believe, tried to achieve is a flexible regime.

My last comment really is that we were really aware of standing order 1(b) which I may, with your permission, read very briefly: "In all contingencies not provided for in the standing orders the question shall be decided by the Speaker or chairman, and

in making his ruling the Speaker or chairman shall base his decision on the usages and precedents of the Legislature and parliamentary tradition."

Mr. Chairman: Is that the chairman of the committee?

Dr. Mendes da Costa: As I understand the standing order, it would be the Speaker or the chairman, depending on whether it was the assembly or whether it was a committee.

Having made those few comments, it may be more helpful to the committee--I am entirely, of course, in your hands as to how you wish to proceed--if possibly members of the committee had questions.

Mr. Chairman: I think there will be questions. I would just like to mention--I do not know if you have noticed it, in the first report or Hansard of the committee, when we discussed the commission's opinion that there is a very fine line between administrative and investigatory types of committees--there was quite a discussion by one or two members regarding that and they were a little bit surprised at your conclusions.

As you know, we have a lot of standing committees that hear delegations--or, for example, submit a private bill for a charitable organization--where a person who appears before that committee is considered a delegation of one, or maybe he is representing a small group of people.

In your report you sort of lumped that person in with the bona fide witness you would have before a committee of a more investigatory nature. In other words, you are saying, for example, that even a delegate or a delegation should be sworn and have the same sort of standing before a committee of that kind as they would before a committee investigating, for example, a trust company that might have gone belly up for some reason or other.

I was wondering if you would like to comment on that, because that was in the early part of your report. Maybe we could move from there as far as questions from the committee are concerned.

11:20 a.m.

Dr. Mendes da Costa: Thank you, sir. On the question of the oath--or as we recommend, the affirmation--may I ask if members of the committee would turn to the report of the commission?

On page 121, in our recommendation 7, we say, "Subject to paragraph 8, no substantial change in the present system and practice of taking evidence under oath or by affirmation or declaration is warranted."

In other words, the first point I would make is that the commission does not as a general policy or principle recommend in the report that there should be any substantive change in the present practice.

If you would turn the page, we do recommend that the oath be substituted, replaced by a form of affirmation which is in

accordance with our earlier report on the law of evidence. But in paragraph 8(e), we say, "As a matter of practice, committees should employ the proposed affirmation where the rights or reputation of an individual or the propriety of an individual's conduct are or may be involved."

Basically, we recommend no change to the present system and tradition of the Legislature and of the committees of the Legislature. All we say in paragraph 8(e) is "As a matter of practice." This is simply a practice to be determined by the committee and by the chairman of the committee.

"As a matter of practice," it is, in a way, an exhortation that regardless of whether the committee hearing could be regarded as administrative or investigative--regardless of that because it is difficult to make clear distinctions in the middle of a hearing which one might think was purely administrative, a situation can suddenly develop where people's rights are involved.

All we said is: "As a matter of practice...where the rights or reputation of an individual or the propriety of an individual's conduct are or may be involved"--then as a matter of practice, in the view of the commission, the proposed affirmation should be employed. But I did read the transcript, as you suggest, Mr. Chairman.

I would, if I may, say once again we did not make any recommendation. This is an issue we considered very carefully. It was very carefully discussed. We were conscious of the reaction that might be engendered by the wholesale administration of oaths, the reluctance that a witness before a committee is made to feel on a purely human level.

We did not recommend that the oath be administered on all occasions. True, we did not draw that distinction because in our view it is not a functional distinction. The functional distinction is, regardless of whatever name may be given to the committee hearing: are private rights involved? Is someone's conduct under inquiry?

On that particular base, what we say is that simply as a matter of practice--and this would be determined in our view by the committee and by the committee chairman--when private rights are in jeopardy, in our view, as a matter of practice, the affirmation should be employed.

Mr. Chairman: Thank you. Mr. Treleaven, do you have a question?

Mr. Treleaven: Yes, either for you, doctor, or perhaps Mr. Springman.

First, you have made certain suggestions in report that more matters be placed in the Legislative Assembly Act, rather than in standing orders or left unstated in writing. Would you not agree that by that means you are transferring control?

With the transference into the Legislative Assembly Act, you

are transferring control from the committee to the courts and, thereby, you are falling into the delays inherent in the court system and the rights solicitors have under the courts for delay.

Dr. Mendes da Costa: Mr. Treleaven, my colleague will certainly respond as well. My view of that does not follow from the commission's report. My recollection is we recommended only one provision that is not there now be inserted in the Legislative Assembly Act. There was only one provision and that was the right to counsel.

My recollection is we made no recommendation--and I stand to be corrected by Mr. Springman--for any insertion of any material in standing orders. We certainly recommended the brochure and the statement.

Again, I think the commission was fully aware of the problem you sketched. I do not recall us making more than one recommendation for addition to the act, that is, the right to retain counsel. I cannot recall that we made any recommendation for material to be inserted in standing orders, as opposed to the brochure and the statement we recommend. Mel, would you please--

Mr. Springman: The only one I can think of is the recommendation with respect to the use of a witness's testimony at a subsequent proceeding. We recommended that ought to be a subject of legislation. In view of the charter, the legislation would presumably take on a different flavour, but there would still be a need to plug the hole in that respect.

The other matter I would like to comment on is the assumption that there is a nexus between putting something in the Legislative Assembly Act and the involvement of the courts. For example, section 48 of the Legislative Assembly Act says, with respect to penalties for contempt, "The determination of the assembly upon any proceeding under this act is final and conclusive."

One can conceive of legislation under the act that would, in fact, involve the courts. Someone might want to get a declaratory judgement in respect of some matter, but I do not think it necessarily follows that because it is in the legislation, the courts are inevitably involved. It depends upon how one structures the act and the language one uses. If you want to attempt to oust the jurisdiction of the courts, as is done in administrative tribunals with respect to certain matters, that presumably can be done. But there is no definite--

Mr. Treleaven: Do you not agree though, that as soon as you put it in legislation, in a statute of any kind, you are open to the interpretation of the courts?

Mr. Springman: Yes, I think that is true. I just echo the commission chairman's comment that only two provisions have been recommended for legislation.

The other side of the argument is that the need for legislation reflects a desire to embed certain things more firmly.

That is a question for the Legislature to decide.

However, the law reform commission did not think the majority of its recommendations ought to form the subject matter of legislation. In the opinion of the commission, only two matters ought to form the subject matter of legislation. The right to counsel and the use of a witness's evidence at subsequent proceedings were thought to be of sufficient importance to require enactment.

In the absence of that, we are really not talking about legislation at all.

Mr. Treleaven: However, I could not disagree more with the chairman on the right of cross-examination. It opens itself to all kinds of games and nuisance and therefore, monumentally, I see that as one of the very central portions of your report.

Dr. Mendes da Costa: Mr. Treleaven, if I may, sir; the intention of the commission was to say the right to retain counsel is a right of real importance and should be enshrined in legislation. But once counsel is retained--we say that quite clearly in our recommendations--legislation should not be concerned with the right to cross-examination.

In other words, the right of a citizen to counsel is in the statute. But what we do say is, and I ask you to turn to page 125 and recommendation 15, "A new provision in the Legislative Assembly Act should provide that a witness of a legislative committee hearing has the right to retain counsel."

11:30 a.m.

Now, obviously we are not drafting the statute at this stage. All we are saying is the right should be in the statute. But then in 16, quite separately, "(a) Counsel should be entitled as of right to offer advice...at all times;" and then, "(b) Where a witness's rights or reputation are or may be in jeopardy or where the witness's conduct is or may be in issue, counsel should be entitled to examine and to cross-examine witnesses and to make submissions" he should be granted full rights of active participation.

We, the commission, took the view that it would be idle to say you have a right to counsel and then when you appear before a committee where your rights and your reputations are in jeopardy, counsel does not have the full liberty to pursue his function.

May I come back and stress the right to cross-examination. Recommendation 15 dealt with the amendment to the Legislative Assembly Act. In the view of the commission, the right to cross-examination clearly ought to be there, but I would stress two things if I may.

The right to cross-examination would arise only where a witness's rights or reputation were in jeopardy, or where the witness's conduct was an issue. Secondly, again may I say, sir, the commission was well aware of and deliberated quite carefully the difficulties that can occur when the right to cross-examination is

abused. But I would say again what we have said in the report--in fact I believe it is our concluding remark in our report--that whatever the situation is, much will depend upon the chairman of the committee.

In our view, the chairman of the committee has complete control of the proceedings in this regard. If, in the view of the chairman of the committee, counsel is abusing the right to cross-examination, then the chairman can control the proceedings before the committee.

We were fully conscious of the problem you raise. I read with great interest the transcript of the two hearings of the committee, so forgive me if I reiterate simply two points. One is that the right to cross-examination be in the statute was not recommended by the commission. The only right in the statute is the right to counsel.

Mr. Chairman: That does not extend beyond that? I get the impression from Mr. Treleaven's questions that he feels if we give the right as set out in recommendation 15, the other rights as set out in section 16 would automatically follow.

Dr. Mendes da Costa: It certainly was not the intention of the commission and as I say, we were not drafting legislation. The right should be in the legislation but the role of counsel, once he is retained--

Mr. Chairman: You want to give the chairman the authority under 16(b).

Mr. Treleaven: Mr. Chairman, first, the chairman is subject to the majority of the committee, his ruling being challenged. But my central point on recommendation 15 is if you put it in the Legislative Assembly Act and you say every witness has the right to retain counsel, there is a certain implication in that. You know the next time anyone questions that, an enterprising solicitor is going to go to the courts and ask, what are the implications? If you have a solicitor there, what are his rights? He is not there because of his pretty face or to sit silent. He is there for some reason.

Then you have the courts interpreting. You leave it open to the courts. It is also open to the solicitors to delay proceedings for an interpretation as to what that means. My position is fairly clear on that. It opens up devilment by even having it in the Legislative Assembly Act.

If you put it in the standing orders, then it is a House organ, so to speak. It does not get into the courts for interpretation or delay the proceedings here while the solicitors run to the courts for their interpretations. It is opening a crack in the door that I am concerned about--putting it in the Legislative Assembly Act. I would rather keep it in the internal workings.

I do not disagree with the basic fundamental idea of having a solicitor there to be whispering in the man's ear and telling him of his legal rights. To inform, not to advise, and take the

penalties--that may be the lesser of several evils. I do not disagree. It is just that I do not like it going outside this House.

Mr. Springman: I am not sure there is any disagreement between what you have just said and what the chairman of the commission has just said.

As I understand it, the commission's position is that it would not form part of the Legislative Assembly Act. As I understand your position, you do not want it in the Legislative Assembly Act because that might give rise to certain things you do not care for. I do not see any conflict in those two positions.

Dr. Mendes da Costa: The commission had a difficult task in advising a committee of the Legislature as to how it should treat witnesses that come before it. As I am sitting here as a witness, I appreciate the difficulties. I assure you that very real consideration was given to the issue that you have raised, and also the sense that you expressed was fully appreciated.

If a witness's rights or reputation are in jeopardy, it may be that in what began as an administrative hearing, someone makes some comment--whatever it may be--but the rights of the witness here before you are now in real jeopardy. Maybe it is an investigative hearing and that is why he had counsel in the first place.

In the view of the commission, the counsel should be given the right to cross-examine. This right should be given to the witness, subject to the committee's control of its own affairs through its chairman. If there was an abuse, the committee can correct this, again, through its chairman.

It was not the intention to put this into the act, but it was the intention to bring, I think quite clearly, the view of the commission that--in these circumstances--it is the best way that we commission saw to protect the private interests involved.

As I said initially, in this area you have potentially conflicting public and private interests, and in our view in this particular context the best way to protect the private interests of the witness if his rights are in jeopardy is to give the right to cross-examination, with abuse to be corrected by the committee.

Your point, sir, as to where you put recommendation 15, the right of counsel--assume for the moment, Mr. Treleaven, that the committee were to accept the policy; that is, the right of counsel should be in the statute but the role of counsel should be subject to the control of the committee--he would have this right where the witness's reputation is in jeopardy, but the committee would control its own affairs through its chairman.

If this kind of policy were accepted, the legislation could make it crystal clear where the court would and would not be involved.

As my colleague, Mr. Springman, read a little while ago from the Legislative Assembly Act, you now have section 48, "The

determination of the assembly upon any proceeding under this act is finally conclusive."

One can certainly structure legislation to carry forward the policy that is decided upon by the assembly. If the point is not in the act or the standing orders, my only response would be that the commission felt it sufficiently of fundamental importance to put it in the act.

Mr. Chairman: Dick, would you be happier if recommendation 15 was amended to have the provision in the standing orders rather than in the Legislative Assembly Act? Would you then agree to recommendation 16?

Mr. Treleaven: Where?

Mr. Chairman: Recommendation 16.

Mr. Treleaven: Yes, but where in recommendation 16? In the standing orders?

11:40 a.m.

Mr. Chairman: No, just in this guideline.

Mr. Treleaven: Certainly.

Where recommendation 15 is taken out of the Legislative Assembly Act--I should like to see it in the straight standing orders for committee chairmen to have in front of them.

You are correct. Certainly I agree to recommendation 16 then. In the report which then becomes a precedent of this House, if the report is agreed to by this committee--by all means.

I am having to be put in an extreme position here, at least I feel that, over this cross-examination situation. I certainly would want that right used in practice; I just do not want it put in writing, so that it can be abused.

Mr. Charlton: On this point, the basic recommendation was to put the right to retain counsel in the act, I think, and that was the only recommendation about legislation.

Would it not satisfy your concerns if the right that was put into the act is very specifically defined as the right to advise and nothing more?

Mr. Treleaven: No, I do not. That opens up--

Mr. Chairman: If it's going to be subject to a court--

Mr. Treleaven: Yes, and as soon as you get a right to anything, to advise--I will use an example.

If I, a committee member, ask you, doctor, as a witness, a question, and Mr. Springman is your solicitor, he starts advising you.

The chairman says, "May I have your answer, doctor?"

"I am still advising you."

A day or two days later: "I am still advising you."

As soon as the chairman tries to stop you and say, "You are now well advised, it is three days later," then you are off to court with Mr. Springman, who says: "I'm hauling my client out of here. We're off to court for an interpretation as to how long the advice may be."

Then the committee is blocked, the committee is stopped. Its entire intention is finished.

I see that opening up, because advice--as soon as you open the door, then how long is long? That is the nonsense I see starting and that is why I do not want it in writing. I am all for putting it in the precedents and having it as guidelines, but not in writing, outside this assembly.

That is the nonsense I see. I made my living for 20 years as a solicitor trying to find loopholes, trying to find edges. So did the chairman.

Interjection.

Mr. Chairman: There are a lot of them walking the streets of Woodstock.

Mr. Treleaven: Therefore, of course, any enterprising solicitor will fight it. He has a job to do. He is retained to do a job for a client. He is to do it the best he can. That is an obvious place where he is going to find an edge, find a crack. I see that and I do not like to open the door that amount.

Mr. Chairman: I think there is a happy compromise. I can almost agree with Mr. Treleaven.

Mr. Treleaven: What did I say wrong?

Interjections.

Mr. Chairman: I think as far as the committee is concerned, if it is in the standing orders, the committee will pay as much attention to that as if it was in the act.

If it means that we can have some reference in some brochure, or guidelines--whatever the law reform commission is recommending as embodied in recommendations 16(a), (b) and (c)--then at least a member of that committee can raise that, can refer to recommendation 16(b) or refer to some guideline or brochure, and say: "Mr. Chairman, this is set out in such-and-such a document. There is a situation here where this witness's rights or reputation may be in jeopardy. I would suggest that Mr. Jones and his counsel have the right to cross-examine."

That is basically what would happen. Then the committee would vote on that, as to whether or not in fact that witness's rights may be in jeopardy. The vote could go either way, depending on the circumstances.

But that to me is a big plus; it sets out in some form, some document, the feelings of your commission as to the rights of cross-examination, without directing or ordering the committee and taking away certain powers from it.

Mr. Treleaven: Might I address all three of you--or maybe Mr. Cavarzan, is that correct? They have trouble with the emphasis on "Treleaven" too--with regard to the constitutional matter. Reading the transcript, you will see we have certain problems there.

First, on the Charter of Rights: I know nothing about constitutional law. I think I flunked it first time around back in the late 1950s and I had to do a substitute on it.

Mr. Chairman: You should have had Bill Letterman; he was the greatest.

Mr. Treleaven: If you do not go to class, I guess you cannot pass.

In this regard, the criminal law in section 13 of the Charter of Rights is open to interpretation. On the way down here, I heard on the radio something going on with--what is that gay magazine?

Mr. Epp: The Body Politic.

Mr. Treleaven: Right. Clayton Ruby is going to court. The magazine has been charged with something and he is going to court under the Charter of Rights. All right. It has started and the circus is going to begin. As I see it, it is prima facie. It takes care of criminal law and it leaves civil law open.

Incidentally, I am not sure how much you took the upcoming Constitution into consideration in your report. You did? Seeing that that law is going to be established over the next several years through the courts, would this committee be wise to take a step now with regard to the civil, and maybe even acknowledging the propriety of the criminal law?

Where are we if we take the step and close our door by saying, "No proceedings from here shall be used against them, either civilly or criminally," and then we find out the interpretations of the courts slightly open it again? Is it not dangerous to close it now? Would we not be better off to leave it alone for subsequent years until the courts have established and interpreted the Bill of Rights and its ramifications?

Mr. Springman: I do not know. It is quite possible, obviously, that section 13 of the Charter of Rights will come before the courts very soon. It is quite possible it may take years and it is quite possible that it is not, as I think we all tend to assume, restricted to subsequent criminal proceedings.

However, you have said it yourself that it might take years. In the interim, witnesses will potentially be under a sword of Damocles with respect to the use of their evidence at subsequent civil proceedings, at least. To that extent then, if the Legislative Assembly enacts legislation dealing with civil law, it will have stopped that from happening.

There is no answer to your question. It is not a question of it being wise or not for the committee to act. If we are right and section 13 is restrictive, I think there is a gap in the law. If it is not restrictive, well, nothing ventured, nothing gained.

The Legislative Assembly has acted out of an abundance of caution. It has cut off a potential abuse, or something the commission thought was an abuse. If it later turns out, years or months from now, that it was unnecessary and redundant in view of section 13, it will not be serious.

The only problems I can see would be if there is a section in the Legislative Assembly Act or some piece of Ontario legislation that might be different from section 13. It might be opened as to how it relates to section 13 if it includes criminal matters; I do not know. But I would have thought restricting Ontario legislation to civil matters would be a wise move in the interim.

Dr. Mendes da Costa: The commission recommended, on page 126, recommendation 20(d), that "legislation dealing with the use of a witness's evidence at a subsequent proceedings should be enacted by Ontario in the proposed part II...and...should provide that:" and then it deals with the kind of policy the legislation should implement.

11:50 a.m.

In brief response to your question, the prime purpose is to ensure there is freedom of discussion when witnesses come here. Presumably the policy behind section 13 in the charter, the policy behind what we are talking about, is that there should be full information given to this committee. This is the overwhelming policy behind it.

The advice you would probably receive today, if I had a guess, is that what a witness says cannot be used against him in subsequent criminal proceedings, but it may be used against him in civil proceedings. We do not really know. That has not been interpreted by the courts so we cannot really say.

If the policy is important in the view of the committee, why not enact matching legislation to section 13 so you will have it there and there? Between the two, you cover the field. It may be that provincial legislation is eventually redundant and maybe it is not, but it would clearly provide a restriction upon the use of evidence in subsequent civil proceedings in the legislation of Ontario.

Mr. Treleaven: One thing. There is not only, as you say, the aim of this committee to get information in front of it, but

also truthful information. Do you feel there is enough protection under the Legislative Assembly Act? It says somewhere, and I will paraphrase, that it reserves unto itself the right to deal with giving false information. Therefore, do you feel there is enough protection under the Legislative Assembly Act that we are getting true information? Do we not need to try to reserve unto ourselves any additional fist, strength, muscle with regard to the civil matters in trying to make sure it is truthful?

The whole purpose of using evidence from a previous proceeding is, of course, to try to attempt to make sure the truth is given. That is the only purpose in it; to try to show up something that is different in previous testimony to the present. I am concerned about giving up a little bit of muscle, if you will, as to ensure you get the truth. I am asking you: is there sufficient in the Legislative Assembly Act to ensure that? Are we losing anything by giving this up?

Dr. Mendes da Costa: May I say the whole exercise is drawing a value judgement as to what has priority. One could argue that it is wrong, if you say both in the charter and possibly in provincial legislation, that this evidence cannot be used in other proceedings.

Why should there be protection if it reveals culpable conduct, either criminal or civil? One could argue that. The countervailing interest is to receive the information so that it is freely given. There is no fear of its later use in other proceedings. So one can balance that either way.

I think it seemed to the commission, and my only function is to reflect the recommendations of the commission, that you have, as it were, strong teeth in the Legislative Assembly Act and contemporary acts.

The witness is also under oath for affirmation in perjury proceedings. Surely, regardless of whether he can be sued in a civil case in the Ontario courts, I would hope he would be more concerned with the fact that he can be charged and convicted of perjury. I think the criminal sanction of perjury would be there, and obviously the full power of this House to bring the man on contempt for false evidence.

I fully see and appreciate the concern, but I would suggest it could be more properly controlled by the criminal sanction of perjury and by the contempt of the House rather than by leaving the prospect of civil proceedings open.

Mr. Cavarzan: With respect, and not to embellish the answer of the chairman, section 13 of the Canadian charter does make this specific exception for prosecution for perjury or for giving contradictory evidence. I think that is the answer to your concern about the truthfulness of evidence that is given before committees.

Mr. Epp: Mr. Chairman, I would like to digress on another point for a moment and ask Mr. Cavarzan a question. If a particularly slanderous comment is made in the House or in a committee where the member has immunity, and that particular comment

is reported in the newspaper or through the media, is it still true, irrespective of what has happened in the charter and every place, that the reporter has protection as long as he reports exactly what was said in the House, and no more and no less?

Mr. Cavarzan: Yes. In my view, I would regard that as a privileged occasion and not subject to proceedings for libel. I am not as current as I should be on discussion in the report on what I understand was a qualification in the report of the commission on excesses in statements that are made, so I am really not in a position to comment on that. But subject to that, in the illustration which you give, I do not think there would be liability in a civil action for libel.

Mr. Epp: If he starts to elaborate on it and so forth, then there could be a civil action, but if he reports what has been said, he is protected.

Mr. Cavarzan: I believe that is so, yes.

Mr. Springman: I think there is some doubt as to where the protection might terminate, but I think in your example, as John said, the answer is correct. The commission did not really deal with that situation. The commission's report did not make recommendations respecting potential actions for libel and slander with respect to something said at a committee hearing. It was sort of a tangential point in the discussion.

Mr. Chairman: Are there any other questions from the members of the committee?

Thank you very much, gentlemen. We appreciate your appearing before us today and I think you have helped clarify a number of points.

Mr. Treleaven: Might I state, Mr. Chairman, I am sure they know I am one of the new boys and therefore I am not very familiar with the report, but may I compliment you on the report. I read it six months or so ago when it came out and, having been a fairly new chairman at that point, found it very helpful. I wish I had had it a year ago when I became a new chairman. I found it very valuable and relevant and I compliment you on it.

Dr. Mendes da Costa: Thank you very much. The commission appreciates your kind words. May I say that if the commission can be of any further assistance to your committee we would be very pleased to return here.

Mr. Charlton: On that point, Mr. Chairman, as one of the few members who are left of the committee which made the original submission to the commission, I would like to personally thank you for the report, which I think dealt very well with all of the matters of concern we raised originally. It has been very helpful, not only to those of us who are still here but to the new members of the committee as well.

Mr. Chairman: Gentlemen, before we adjourn, you notice Mr. Stone's comments at the bottom of his submission to us. Mr. Breagh,

before he left, commented on that and supported the suggestion that a small work group be set up consisting of a draftsman, one or more members and the clerk to prepare specific drafts in the light of the discussion. We have the advantage now of at least three and possibly four reports of our committee discussing the commission report, including today's very helpful discussions and our own summary that Mr. Eichmanis submitted to us today.

There are a number of early recommendations in the commission report prior to recommendation 15 that we touched on very lightly. However, there did not seem to be too much controversy except, if I remember, Mr. Rotenberg objected to the connotation that a person appearing before a mainly administrative committee would be considered a witness.

Mr. Treleaven: Mr. Chairman, when the discussion was finished I think the consensus was that while we recognized the two different types of witnesses it was impractical to try to divide them up in writing, even though we recognize them by rules.

Mr. Chairman: What we should do now is to appoint, I would suggest, at least two members of this committee, possibly three, to have some balance in a rotating way, along with Mr. Eichmanis, Mr. Stone and Mr. Forsyth, if he can find time from his onerous duties around that big table. Do we have three volunteers?

Mr. Charlton: Could I just suggest that this subcommittee be struck to include one member of each caucus and the others you mentioned, and since there are a few members missing this morning, at least at this moment, that each of the caucuses decide from among its representatives on the committee which one it would be and inform the clerk by the end of the week?

Mr. Chairman: I think that would be a good idea. Perhaps you could advise Mr. Forsyth by the first of the week, next Monday or Tuesday, of a representative of each one of the caucuses represented here.

Mr. Piché: Is it in order to advise you of the member we would like right now, which would be Mr. Treleaven? I am sure that is the member we would like to see sit on it.

Mr. Chairman: I could suggest a motion that Messrs. Epp, Breaugh and Treleaven be the members of this committee and hopefully get a seconder and vote on it.

Mr. Charlton: Seconded.

Motion agreed to.

Mr. Chairman: Thank you very much, gentlemen.

The committee adjourned at 12:04 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

SUBCOMMITTEE ON REPORT ON WITNESSES
DIVISION BELLS

THURSDAY, MAY 20, 1982

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
Piché, R. L. (Cochrane North PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Substitutions:

Eves, E. L. (Parry Sound PC) for Mr. Johnson
Kolyn, A. (Lakeshore PC) for Mr. Piché

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, May 20, 1982

The committee met at 10:19 a.m. in committee room 1.

Mr. Chairman: I see a quorum. I am impressed with all party turnouts here, except the NDP.

Mr. Breaugh: We did not want to overload you. We figure one is enough.

Mr. Chairman: I have a note here from the government whip that the following members will substitute on the committee today. Mr. Eves for Mr. J. M. Johnson, and Mr. Kolyn for Mr. Piché.

Interjections.

Mr. Treleaven: Every member of this Legislature has the right to attend a committee meeting.

Mr. Chairman: These, as you know, will be the voting members.

SUBCOMMITTEE ON REPORT ON WITNESSES

Mr. Chairman: The first item on the agenda refers again to our subcommittee on the Ontario Law Reform Commission Report on Witnesses Before Legislative Committees. You will recall at our last meeting we formed a subcommittee to deal with the report and also to deal with the discussions that are recorded by this committee in respect to our opinions on the report and some amendments we have made and recommendations we have made that do not entirely agree with the report.

Mr. Breaugh was named to represent his party on that subcommittee. I understand that he wishes Mr. Charlton to replace him, so I thought I would bring it to the committee. If there is no objection, Mr. Charlton will replace Mr. Breaugh and will sit along with Mr. Treleaven and Mr. Epp on the subcommittee.

I think it is important that we get some direction on when you intend to meet. I do not want to delay this too long. This is a rather important report. Will you gentlemen get together and agree to a meeting of your subcommittee at a convenient time, but certainly some time before the end of this month, at least for your first meeting? Is that agreeable?

Mr. Epp: We will probably be meeting after this committee meeting today to decide when our first full meeting should take place.

Mr. Chairman: That would be just fine.

Mr. Treleaven: Mr. Chairman, I would like to take a slight issue with the terminology of "subcommittee." I do not think it was referred to last day as a subcommittee. Since we do not really have any around this year, in my experience, I think it would be setting a precedent I would rather not see.

I do not think we used the prefix "sub." I was fairly cognizant of that.

Mr. Chairman: What would you call it?

Mr. Treleaven: A committee.

Mr. Chairman: How can you have a committee of a committee?

Mr. Breaugh: That is the problem, Mr. Chairman. The standing orders provide for subcommittees and they have been used rather regularly in the last few years and they seem to me to be a normal procedure. I cannot think of any other way in which you would strike a portion of committee to deal with the matter without referring to it, as it does in the standing orders, as a subcommittee.

Mr. Chairman: Surely you do not feel, Mr. Treleaven, that it is a denigration of the work this committee would do that you are in fact set up by a committee.

Mr. Rotenberg: If you want we can come up with a whole list of names.

Mr. Chairman: You will recall in the Re-Mor matter there was what--

Mr. Treleaven: I have read the Re-Mor proceedings in its subcommittees, yes. I would rather call it a group.

Mr. Chairman: How about groupie?

Mr. Rotenberg: Mr. Chairman, committees have had steering committees in the past to do things, rather than subcommittees.

Mr. Chairman: Do you want to call it a steering committee?

Mr. Treleaven: Yes, I like that, Mr. Chairman.

Mr. Epp: Talk about wasting time, let us not waste time. It is a subcommittee and let us call it that. That is really what its function is.

Mr. Chairman: Let us call it the subcommittee/steering committee of the standing committee on procedural affairs. Carried.

DIVISION BELLS

Mr. Chairman: The next item of business is the consideration of proposals relating to division bells. I guess we are going to decide how many bells there should be.

Seriously, gentlemen, you will recall that we dealt with this matter at our meeting on April 1, 1982. At that time--you have the Hansard there, Mr. Rotenberg, that I asked you not to take from me--we had a lengthy discussion, mainly as the result of the Ottawa situation. It was resolved by a motion by Mr. Breaugh which I tried to sum up at the end of the meeting. I will read it to you:

"Mr. Chairman: Mr. Breaugh moves that the members of the committee return to their caucuses with three options. One is the proposed standing order which Mr. Rotenberg has put before the committee. The second is that the committee would attempt to formulate a report which would be accepted as precedent, and that means essentially we would work out how we would deal with this. We would put it all in a report, we would table it in the House, the House would debate and vote on it, and that would have, not the same status as a standing order, but at least we would have tried to deal with it. The third option no action, and that would bring the matter back on the committee's agenda in six weeks' time."

It is about six weeks since we first dealt with this. To refresh your memory, I will read Mr. Rotenberg's proposal, which was the first option.

Mr. Rotenberg moved that the standing orders be amended by adding thereto the following standing order: "Except as provided in standing orders 2, 63, 64, 94 and 95, when the members are called in for a recorded vote, the division bells shall ring until the whips return to report to the Speaker that the members are ready to vote, but at no time will they ring for a longer period than eight hours, at which time the Speaker will call for the recorded vote of the members then present, whether or not the whips have returned."

Maybe the clerk of the committee can fill me in on this. We asked for the caucuses to report. I believe we have had a report from the Progressive Conservative caucus. Have we had any other reports?

Clerk of the Committee: No.

Mr. Mancini: Excuse me, when did you ask the caucuses to report?

Mr. Chairman: This was in a letter by the clerk to the various whips.

Mr. Mancini: Our clerk?

Mr. Chairman: Yes.

Mr. Rotenberg: It was as a result of a motion of April 1 by Mr. Breaugh.

Mr. Breaugh: What I would suggest, just before we start, is that maybe each of the caucuses could get a chance to put on the record its official caucus response to it.

Mr. Rotenberg: That would be as we speak, I believe.

Mr. Breaugh: We can do it as we speak, sure. I just thought that perhaps you might--

Mr. J. M. Johnson: As chairman of the Conservative caucus, I want to state that we are fully in support of the motion put forward by Mr. Rotenberg.

Mr. Chairman: Does any member of the Liberal group here want to speak?

Mr. Mancini: My recollection is that the whip brought this to our caucus, and the caucus felt it was too early to deal with that specific issue. There are several other things on the plate that we had been bringing before the procedural affairs committee, and none of them has been dealt with fairly yet. That basically is our position, to that particular letter, may I add.

Mr. Treleaven: Mr. Chairman, the reason we deferred it for six weeks was so that each of the three caucuses could consider it; otherwise, we would have finished it up then.

Mr. Chairman: We shall hear from Mr. Breaugh for his party.

Mr. Breaugh: We dealt with it about two weeks ago. We heard the three options that were there. It seems that one of the options is not an option any more, now that this thing has occurred.

Our caucus preferred the position that a precedent ruling be drafted, mostly on the basis that any change in the standing orders limiting it to a particular time slot would then encourage people to repeat the process so that we would get a repetition of the same problem, but we would not have a mechanism to deal with it. So we opted to accept the position that we do some form of a precedent ruling, that it be drafted, and that we clarify the existing standing orders. We went through the standing orders that are here in some detail.

Our reading of them and our interpretations of them say that that should not and in fact cannot happen in this House. None the less, it did happen, so it would appear that there is some need to beef up the standing orders, but we would prefer that it be done by way of a ruling prepared by this committee and subsequently adopted by the House.

We are concerned about any move to put on the record a standing order which limited the bells. On the surface that is not a major thing because we have accepted a lot of time limits in here. However, when one gets below the mechanics of how long the bells might ring, one does get to the point where one would think that in a parliament, which supposedly is based upon the premise of having all of your representatives there, you would be prepared to proceed in the absence of some substantial portion of the House. It is not a matter of an individual exercising conscience, but it is denying the basic premise upon which a parliament is founded.

Again, our preference is not for change to the standing orders, but rather the preparation of a ruling adopted by the committee and subsequently the House for the guidance of the Speaker.

10:30 a.m.

Mr. Chairman: For the point of clarification, Mr. Breaugh, you indicated that the rules are sufficient at the present time to deal with this, that there is in the present standing orders some control that can be implemented by, I assume, either the Speaker or the House.

Mr. Breaugh: Yes. If, for example, you go through with Mr. Rotenberg's proposal to change the standing orders, the proposal itself recognizes that we have in a a number of places in the standing orders decided that for practical purposes we will let the bells ring for short periods on quorum calls and longer periods for certain kinds of division. We have established how it could be done in committee. It is clear in there that this House has accepted that for a number of purely administrative matters we accept the notion, as a legislature, of divisions and time limits.

Mr. Chairman: More by precedent than by rule.

Mr. Breaugh: No. In the standing orders it runs through how long we let the bells ring, for a quorum call and for 10 minutes and for 30 minutes.

Mr. Epp: Would you be more precise in referring to these?

Mr. Breaugh: Yes. They are right in the front of--

Mr. Rotenberg: On a point of order: You speak of--

Mr. Chairman: Dave, I want to get a clarification of his party's position on this. I have asked a question and I want to give him the opportunity to answer the question, and then we will move on from there.

Mr. Breaugh: I think David has got them all in his motion. Standing orders 2, 63, 64, 94 and 95 all make reference to divisions. The longest one in there, I believe, is 30 minutes. Our reading of the standing orders states two things which would prevent that thing occurring which occurred over the weekend.

Mr. Mancini: What specifically in the standing orders is that?

Mr. Breaugh: In the standing orders specifically we set the times that the House will sit during the course of a day.

Mr. Mancini: But are you saying that it is in the standing orders already?

Mr. Breaugh: Yes, it is in there now.

Mr. Mancini: Could you draw our attention to that?

Mr. Breaugh: Yes. For example, rule 3, makes reference to the night sittings. That is on page 1. There is rule 2, also on page 1.

From that point of view, as you may recall when Mr. Speaker was present, I pointed out to him, and several members of my caucus concur, that the option was present for the Speaker in that situation to simply say, "It now being two of the clock, I do now leave the chair." The rules are clear in providing him with the opportunity to do that. The Speaker, you may recall, expressed a bit of uncertainty as to just how comfortable he was in doing that, but our reading of the standing orders says that we have been rather specific about when the House begins its daily session and when the daily session ends.

For example, if you are in the middle of a debate and the Speaker says, "It is now pretty close to six o'clock," there has never been any question that it is six o'clock, or it is 10:30, but it is clear that that daily session ends at a specific time, on Fridays in the afternoon and on evening hours on Tuesday and Thursday.

It was our view that there could not have been an occasion when the bells would ring as they did in Ottawa. The first thing that a Speaker would do here would obviously be to let the bells ring, but at 10:30 p.m. he would say, "It is now 10:30 and I am leaving the chair," and the staff would go home and the members would come in the next day at 2 p.m. and we see what things are like there.

We have delineated in rule 94 how long we let the bells rings for various purposes. It seems to us, therefore, from a practical point of view that the House has established what it thinks is a reasonable time to let the bells ring for various purposes and that going beyond that then challenges the basis of a parliament, where it is clear that a large number of members of that parliament--in this case a political party--say, "We just don't want to vote." The way to resolve that is not to put a further time limit on it, but to try to resolve what the problem is. I wish you all luck in trying to determine what the problem was on Friday.

Mr. Mancini: Mr. Breaugh you stated from what I understand, and please help me, that you feel the standing orders are such that the Speaker had the authority on Friday to basically stop the bells from continuing.

Mr. Breaugh: Right.

Mr. Mancini: Evidently the Speaker and a large--

Mr. Breaugh: Did not feel that way.

Mr. Mancini: --group of members of the assembly do not concur with your basic assumption. You further go on to say that you do not want to make a specific recommendation to change the standing orders but that you want some type of ruling on what has been the past practice.

Mr. Breaugh: No.

Mr. Mancini: No? Is that not what you said? Then what were you going to ask the clerk to supply?

Mr. Breaugh: I was not going to ask the clerk to supply anything.

Mr. Rotenberg: Mr. Chairman, thank you for reading the motion. I am interested in the point that Mr. Breaugh makes and, with respect, I would have to disagree with what he says. First, there are, as he says, a number of places in the standing orders where the bells are limited. I think we have covered them all because the clerk helped draft this motion.

Standing order 2 is really the call to order where the bells ring five minutes before the sitting. Standing order 63 is on votes of confidence and there is a five-minute bell. Standing order 64 is on private members' business on Thursday when there is a 10-minute bell. Standing order 94 is a prearranged time to vote where there is a 30-minute bell, and standing order 95 is a stacked vote in committee of the whole where there is a 10-minute bell.

In each of those situations at the end of the time period the Speaker simply rises and calls the vote. The whips do not walk in. There is no need for the whips to walk in. The whips know they have to have their members there at a certain time and the members are there. In that situation the vote is taken at the end of the time period.

There is nothing in the present standing orders which, in my opinion--and I am sorry to disagree with my colleague Mr. Breaugh--covers the situation as he outlines it. There is nothing in the standing orders which in any way requires the Speaker to wait until the three whips walk in to take the vote. There is nothing in the standing orders which indicates in any way when the Speaker takes the vote.

If we look at standing order 94(b), it says: "When members have been called in for a division, there shall be no further debate." That is a very significant point. Standing order 94(c) reads: "When the members have been called in, the Speaker shall again put the question and every member present at that time, subject to standing order 11," which means the Speaker cannot vote, "shall record his vote."

Listen to that very carefully. "When the members have been called in, the Speaker shall again put the question." When have the members been called in? He takes a voice vote, five members stand up and the Speaker says, "Call in the members." The members have been called in and at that point, in effect, the Speaker can take the vote. From that time at any time forward the Speaker can take the vote. The standing orders, unfortunately, are totally silent on when the Speaker is authorized to take the vote.

I think if we could be very technical about it, the Speaker can really take the vote at any time the Speaker in his wisdom wants to take the vote because the orders are silent. However, the precedent in this House, the precedent in Ottawa, not in Westminster--and I will get to that in a moment--is that when there is not a time bell, the Speaker waits until the three whips walk in. I would be very hesitant, and certainly the Speaker was very

hesitant--and I think he was correct--to not follow that precedent which, I guess, has been with this parliament ever since it has been going, and on his own, either by giving notice to somebody or saying, "I am going to take the vote in 10 minutes and whoever is here is going to vote," as he does in those standing orders where there is a time vote.

The other point of Mr. Breaugh's motion is that the House would adjourn, say, on Friday at one o'clock or on another day at 10:30 at night. But the precedent again,--and it is not anywhere in the standing orders--which I think we do follow is that when the Speaker says, "Call in the members," the clock stops. When the Speaker says, "Call in the members," if, as in that case it was 11:40 on a Friday morning, the official parliamentary clock is at 11:40 on Friday until the Speaker stands up and takes the vote.

That is the precedent in this House and in Ottawa. In Ottawa the clock stopped on the day and for two weeks it was the same day in Ottawa. That is the same precedent as in the American Congress when the clock stops, but not in Westminster. So whereas we would automatically adjourn on that Friday at one o'clock, we never reached one o'clock on Friday until 5:50 on Monday really. That is where we were at.

With all respect to Mr. Breaugh in saying, "Yes, we should have adjourned," I would submit to you, Mr. Chairman, and to the members of this committee that the standing orders really are silent, but all the precedents of this House indicate that the House does not automatically adjourn when the bells are ringing. If it did, quite often when we ring a bell at 10:20 on an evening and take the vote at about 10:35, if Mr. Breaugh was correct that any party can simply not walk in at 10:30, then, of course, it is gone. By precedent the clock stops and we take the vote even if we go beyond 10:30 because the clock is stopped. That is just dealing with Mr. Breaugh.

I do not know if it is a happy coincidence or not, Mr. Chairman, but the time we put to bring this back on was after the events of last weekend.

Mr. Mancini: I think it is an unbelievable coincidence that Premier Davis makes a public statement about having the rules changed and then he sends seven Conservative members to--

Mr. Rotenberg: I did not interrupt you, Mr. Mancini. I brought this motion before this committee over two meetings based on what happened in Ottawa, based on the fact that without any pre-knowledge, certainly, that any of the three parties--the government may have done it, but I doubt it--in this House would, in effect, refuse to answer a bell and would leave the House for a long period of time. I brought this in at that time with the hope that we could put something in our standing orders when this matter was not before us, when a party had not done this, so we could deal with this in an academic manner and not based on the events of last weekend.

Mr. Chairman: I think the Grits were trying to beat that six-week deadline, don't you?

Mr. Rotenberg: Maybe it is better or maybe it is worse; I do not know.

Mr. Epp: It all happened with the timing of the budget.

Mr. Rotenberg: We are having this debate on the heels of what happened last weekend. But I think we should try as a committee--and this committee over the last number of years when some of us have been on it has always tried to deal with matters of procedure based on proper procedure--if we can, and I know it is very difficult, to ignore or not to take into account some of the political events of recent times or other times and try to do it on the basis of what is best for the orderly running of this House and try to ignore some of the immediate politics. I know it is very difficult to do that today, having had this incident happen just a few days ago.

It is important, despite what Mr. Breaugh says, that we put something in the standing orders one way or the other that formalizes the way votes are taken because standing order 94, with respect, is very silent. It is silent on the whips and it is silent on how long the Speaker has and when the Speaker can put forward a vote.

We have precedents, but I would submit, with respect, that nothing in the precedents can solve the problem with respect to Mr. Breaugh on his report from his caucus that there is nothing that this committee can do to make a ruling which would, in effect, upset the precedent. The only thing this committee really can do, if it wanted to do something to solve the problem, is to make a recommendation to the Legislature for a change in standing orders because this committee certainly has not the right to rule on precedents.

As I indicated, the situation in Ottawa and here is the same. The situation in Westminster, for those who were there not too many months ago, is that all bells have a maximum time not of eight hours but eight minutes. A bell is called and members come in to vote. The whips do not walk in. The bells ring and then the members come in and cast their votes in a slightly different manner than we do. They have eight minutes to get back to the House when the bells start ringing because they are also supposed to be in or very near the House.

Mr. Chairman: Just remember the Bronte bridge has only got two lanes for the next month. Carry on.

Mr. Rotenberg: I would not suggest eight minutes.

When we discussed this a few weeks ago, there were other suggestions made of how to resolve this kind of a problem, whether the procedural committee meets or the Speaker should convene and all sorts of other matters. I think we have seen something from the events of last weekend here, as well as from the events of the House of Commons.

First of all, when the House is out and the bells are ringing, committees just do not meet. Secondly, as I indicated previously, if a party does not want to come in and if the House leaders or the party leaders cannot resolve a problem when the problem is before us, certainly the procedural affairs committee cannot resolve the problem.

That suggestion had been made in the past--and I hope the ones who suggested it have abandoned it. How in heaven's name could this procedural affairs committee have met, say, Friday afternoon or Monday morning or some other time and done anything to resolve the problem that was before us? If there are going to be any negotiations or any way of trying to solve the impasse in a period of time, it certainly cannot be done at a public open meeting of the committee.

Getting back to where we were on April 1 and trying, as best we can, to ignore what happened over this weekend, which we cannot, it would seem to me, as I said at that time, that we have to have something explicit in our standing orders on how and when the Speaker takes a vote when the members are called in. There are a number of situations where he automatically takes a vote after a certain period of time. It would seem to me that there should be a period of time in which he automatically takes the vote on every bell that comes before us, that there should not be unlimited bells which could go on for three days, three weeks or three months.

I think also, because it is in the precedents and because there is reference to rulings and so on, we should put some reference in our standing orders that a vote shall be taken when the whips walk in. I do not think the Speaker should be put in a position, as Madame Sauvé was--Mr. Turner was not because it did not last that long--of having pressure put on to break all precedents.

Pressure was put on Madame Sauvé to break all precedents and say, "I am going to take the vote whether the whips walk in or not." I do not think a Speaker of our House should ever be put in that position. It is up to the Legislature to write the rules, not the Speaker. It is up to the Legislature to write the rules and the Speaker to enforce them.

I think we should put reference to the whips and a maximum time limit in our rules, as we have in many votes. We should give a reasonable amount of time for everyone to do whatever they want to, and make it quite explicit that this is a time limit far beyond the other time bells. It gives everyone a lot of time to do whatever they want to do, but does not allow any group of members to frustrate the workings of the House.

Protests are fine. There are many ways members in the House can protest; there are many ways members in the House can hold up the business of the House within the standing orders. It would be my opinion that if someone wants to hold up the business of the House, they do it within the House, on the floor of the House, and not by not being there.

For those reasons, Mr. Chairman, I would like the motion to be put. The way to settle this matter is not really in this committee,

but to let it go forward to the House and have the House leaders negotiate a time and have the matter debated within the Legislature.

I think it is a matter for all the members of the House, not just the 12 members of this committee, to debate and to, one way or the other, settle whether or not we are going to, in section 94, clarify the Speaker's rights, obligations and duties as to how he puts a vote, and the rights, obligations and duties of the members to come in for the vote.

I would ask my motion be put.

Mr. Chairman: Mr. Rotenberg has asked that his motion be put. Is there a seconder for that?

Mr. Rotenberg: I am not cutting off debate, I am just asking that the motion be put today. I am not asking that it be put now. I want my motion to be voted on this morning after the debate.

Mr. Chairman: Apparently we do not need a seconder.

Mr. Rotenberg: I want to indicate, as Mr. Johnson did, that I do this having presented this motion to my caucus, and as Mr. Johnson, chairman of the caucus, reported, the caucus has indicated they were in favour of this motion.

Mr. Edighoffer: Mr. Chairman, I have given this matter a lot of thought. I have had the experience of being a presiding officer for four years in this House and I want to do everything possible to make sure the business of the House goes forward in the most orderly fashion possible.

I read very carefully the comments supplied to us by the clerk of the committee on what is taking place in other jurisdictions in Canada. It seems as if there are very short bells or no limits. If you look at them carefully, that is really what takes place in the other jurisdictions.

I have forgotten the province that made the comment that if there is a limit, you will find the bells will very often go to that limit. Just doing a little calculating on this particular comment, I would calculate that if votes were called during the session on many days of the week, the votes would end between 1 a.m. and 6 a.m. and on Fridays they could go, without any problem, up until 8 p.m.

Mr. Rotenberg: They can do that now.

Mr. Edighoffer: I appreciate that. They can go longer than that, too. To make sure the business of the House is done in an orderly fashion, I am just not certain this limit stated in this motion does give a more orderly type of business in the Legislature. I just do not think I could support this motion.

10:50 a.m.

Mr. Breaugh: I am certain I cannot support the motion. David was quite right when he went through the precedents and what we do around here. You have to sort out the categories. We write

down some rules which attempt to be fairly clear because those are things which we would operate from on a regular basis. Once you get past that, you get into the field of precedents which are meant to help us deal with unusual circumstances we will not meet up with very often. We have done it once or twice that way so that then becomes a reasonable way to proceed.

David is also quite right that prior to last Friday we had very little in the way of precedents on this particular matter. If you think back to the occasions when we have let the bells ring for inordinate amounts of time, it has been, for the most part, at the insistence of the government whip.

Regularly, we would agree to a 10 or 15 minute bell or refer to the standing orders for 10 or 30 minutes. We would go longer than that to accommodate the government whip who wanted to make sure he had a majority present, or at least that he had all of his members present to make the point. So regularly Mr. Gregory would ask, and the other whips would agree, that we just hold off on the bell for another few minutes because he had a minister coming in from making a speech. It seemed a reasonable thing for us to do.

As of last weekend though we have the precedent which I, frankly, did not want. Had the Speaker wanted to he could have taken the advice I and a few others gave to him when he was here and put the problem before the committee. We suggested the standing orders as they are now written be interpreted to read that you would not have the clerk and somebody sitting in the chair over the weekend or overnight. That was not necessary.

I think there is a consensus in the committee that that may be very parliamentary but it is a bit nonsensical. It has an aura of the unreal about it. You have your staff sitting there all night and they know nothing is going to happen. The member who gets named to sit in the chair knows nothing is going to happen. It is an exercise in futility. The clock stops and so Monday becomes Friday. It seems to me rational people would not proceed on that basis.

Unfortunately, by not doing anything on Friday, Mr. Speaker gave this House the precedent I thought it did not want.

Mr. Rotenberg: He had no choice.

Mr. Breaugh: I believe he did have a choice. He could have made that ruling and he could have established a precedent one way or the other. On Friday at one o'clock he could have assumed the chair and said: "It is now one o'clock and the standing orders say this House adjourns at one o'clock on Friday and it is adjourning. I am leaving the chair." That was a choice he could have made. He did not feel comfortable with that so he did not do that.

I would propose we reinforce the Speaker's thinking on that by doing some kind of a precedent ruling out of this committee. It would basically follow the same process as David is suggesting in the standing order; work it out here, send it forward to the House by way of a report, let the report be discussed and adopted or rejected.

The reason I do not like making a reference to eight-hour bells is that it is a guillotine motion of a version I do not think is particularly useful to this House. As Hugh said, if you look at other parliaments and legislatures, they adopt these things to the size and nature of that parliament. If it is a relatively small body, meeting perhaps two or three months in the spring and another couple of months in the fall, as many Canadian legislatures do, they are a little more stringent. The time limits on bells tend to be a bit quicker because everyone is around anyway.

If you go to something like Westminster, a huge parliament where not all members attend on any given day and they are used to guillotine motions, the bells ring in short order. There is a long precedent there that if they introduce legislation during the day it will be dealt with that day. There is always going to be a series of votes between 10 and 10:30 at night and then some kind of pre-orders of the day or post-orders of the day business will get carried on.

I do not think that makes any sense in this Legislature. I do not think the eight-hour proposal does either.

If you put that one through, and I suspect--given the turnout of admirable folks we have this morning--this is going to go through, let me serve notice to you. You put an eight-hour rule in the standing orders of this House, you exercise your majority to make it happen, and I guarantee you personally that your eight-hour rule is going to be used regularly for the remainder of this session.

If you insist that you want an eight-hour ruling, and you love those 2 a.m. votes, I am going to give you the opportunity to have them regularly. You may love that, you may think that that is great, that that is showbiz and that you have really exercised your majority, but if you want an eight-hour rule--and it appears you do--and you are going to put it through this committee this morning, and it appears you are, and you are going to take it upstairs and put it through there, then I think you have just invited the opposition parties, most especially me, who gets particularly pig-headed about this stuff, to give you a chance to exercise the rule you so badly want.

You call any bill, I do not care what it is, and I am going to let you have eight hours of deliberation on it before you get a chance to have your vote.

Mr. Chairman: Even you are going to get tired once in a while.

Mr. Breaugh: I may get tired, but then I am not the government. If the government is proposing--and I think it is the government, the Premier (Mr. Davis) having said that this is a desirable thing to have happen--that it wants its eight-hour rule, the government will get it. You have a majority and you can exercise it in the committee this morning as you obviously are going to. You can exercise it upstairs, and after you do that, I give you a personal guarantee this morning that I am going to give you lots of chances to exercise that eight-hour rule for the remainder of this session.

Now, if that is the way you want to proceed, fine, that is exactly what we will do. I am proposing an alternative to that which is not quite as clear-cut, I admit. I would prefer not to have had the unfortunate precedent set last Friday, but it does--however polite we care to be in this committee--come down to the political process after a while.

It seems clear to me that one opposition party wanted to use that bells exercise, which seems to me to be quite a legitimate thing. It is also pretty clear to me that in this instance the government chose to let those bells ring. The government was obviously well prepared; it had its people lined up for the weekend. It was prepared to go for some considerable length of time and that it was a thoughtful act on the part of the government to let the bells ring.

Mr. Chairman: Sunday was a beautiful day.

Mr. Breaugh: That is right. I think you were crazy but you chose to do that. If that is the way you want to proceed, then all I am saying is be aware that there are ramifications on the other side.

If you put in an eight-hour rule, you are inviting me and every other opposition member, every time we have a division upstairs, to let it go the full eight hours. I am not here to make things convenient for the government. So if you want it, you are going to get it.

All I am saying this morning is that when you force it through here and force it through upstairs, do not be surprised to see the eight-hour rule used, because I guarantee you it will be used. Now, if you want something different to that, I think we can find another way to handle a problem that is of some serious nature.

Mr. Rotenberg: I have not heard a viable alternative, Mike. The committee would like to hear one. I have not heard one yet.

Mr. Breaugh: Well, I put it forward six or seven times and would be happy to do so again.

Mr. Chairman: All right, Mr. Mancini is next.

Mr. Mancini: Thank you, Mr. Chairman. I would like to say that, first of all, I am quite pleased to hear Mr. Breaugh and his party take such a firm position in regard to what would happen if the Tory majority used its strength to ram this motion through the committee and to ram the ultimate passage of the change in the standing orders in the House.

I really do appreciate Mr. Breaugh's firm position on that. However, I cannot agree with Mr. Breaugh and still feel that he has put no position forward as to what we should do as an alternative.

I agree entirely with the action that has been taken by Speaker Turner. He did not have the three whips of the three respective parties report to him. He did the only thing he could do and that was to let the bells ring.

We concur entirely with the action taken by Speaker Turner. Mr. Chairman, it is evident, from all who are here today, and it is especially evident by the 100 per cent turnout of the Progressive Conservative members, that they have been instructed by Premier Davis--

Mr. Chairman: You have 100 per cent turnout too, 105.

Mr. Mancini: Yes, but that is normal for us. The Conservative members have been instructed by Premier Davis--

Mr. Chairman: Oh, this is strictly hypothetical.

Mr. Mancini: The Conservative members have been instructed by Premier Davis to use a heavy hand on the opposition and I say to you, Mr. Chairman, that is one of the reasons why we had that episode on Friday, because this Conservative government has been heavy-handed every since March 19, 1981.

11 a.m.

Mr. Watson: I remember on a vote having to stay here during the winter break so we could talk about the budget.

Mr. Chairman: Order. Let us stick to the resolution, gentlemen.

Mr. Mancini: I could outline a litany of things to demonstrate just how heavy-handed this government has been.

Mr. Chairman: I would request that you avoid doing that and stick to the resolution so you will not be too provocative.

Mr. Mancini: All right then, I will not mention the fact they abolished three important committees, one that was studying Hydro, one that was studying the Re-Mor scandal. I will not mention the important committee studying plant shutdowns that was arbitrarily abolished by Premier Davis. I will not mention the fact that he purchased Suncor without any type of consultation in the House or making it public during the election. Those things I will not mention.

However, I will mention that by the actions which I think are going to take place today, the Progressive Conservative members of this Legislature are going to ruin the procedural affairs committee. We have put several things before this committee and on not one occasion was there any need felt by the government to act immediately on any of those suggestions we placed.

You will recall, Mr. Chairman, we placed before the committee the issue of--

Mr. Chairman: The members can either go out and talk or sit and be quiet. Thank you.

Mr. Mancini: You will recall that--right after the March election when the Liberal caucus elected 13 more members than the New Democratic Party caucus--we put before the committee that the

rotation and the time allocated to each party during question period be adjusted to reflect our numbers in the House. We dilly-dallied with that for over a year.

Mr. Chairman: you will recall, Mr. Mancini, that you put forward a motion and it was defeated by the committee in the democratic way.

Mr. Mancini: Yes, about a year later. There did not appear to be any urgency on behalf of the Conservative members at that time to bring justice to the time allocated to the opposition parties as per their representation in the House.

I put before the procedural affairs committee the fact that at one time--and set by precedent under Speaker Stokes--we had the privilege of redirecting questions. There did not seem to be any concern or any urgency by the Conservative government at that time for that particular privilege and tradition that had been arbitrarily reversed.

We put before the committee the question of parliamentary assistants and whether or not they should be allowed to answer questions--

Mr. Chairman: That was dealt with.

Mr. Mancini: Yes, that is right, and whether or not--

Mr. Rotenberg: You won that motion.

Mr. Chairman: Carry on.

Mr. Mancini: I am still waiting to hear your position, Mr. Breaugh. I appreciate your support--

Mr. Breaugh: If you could not hear if after the sixth time, I give up.

Mr. Mancini: --but you are being very unclear about it. I appreciate your position as to what is going to happen once this Conservative majority lands its heavy blow on the opposition party, but as far as what you would like to see put forth, I am really not too sure, and I do not think anyone else is.

Mr. Breaugh: I taught kindergarten, I understand that.

Mr. Mancini: It is obvious to me--like the other matter that I wanted to discuss after checking my notes, the matter of closure. We had closure imposed upon us for the first time in well over a 100 years, probably the first time it has ever been used in the Legislature; it was imposed on us by that government.

Mr. Rotenberg says to us today: "Well, stay in the House if you have objections. Talk in the House." When we did that on a very important matter, he and his government voted closure.

It is clear to me that the only thing that the Conservative government wants to do is to strangle the opposition and make us as

impotent as possible. We wish to give notice to the government. In case it does not realize it, we got a million votes in the last election and we are going to represent those people.

I think it is appalling that you come here, after being issued orders by Premier Davis, to strangle the opposition. Frankly, we cannot support the motion that has been put forward by Mr. Rotenberg.

We agree with the position that was taken by Speaker Turner. We agree on that precedent and we firmly agree that he acted accordingly and properly as per the traditions and conventions which govern this House, and I am sure the Progressive Conservative members are really familiar with that word.

Mr. Treleaven: I have several things, Mr. Chairman. I was going to make one or two points but the longer I sat here and heard things, so my points expanded.

First--certainly it is in Hansard--I would like everyone to take notice of and I would like to underline the promise or the threat of Mr. Breaugh, take it whichever way you wish.

Mr. Breaugh: Take it as a threat.

Mr. Treleaven: It is a threat? Thank you.

Mr. Breaugh: The word "promise" has a bad reputation in Ontario.

Mr. Treleaven: I assume that if I had called it a threat I would have been corrected as to it being a promise. Therefore, the promise is there--the threat is there--that there will be repetitious eight-hour delays, procrastinations, whatever.

Interjection: Blackmail.

Mr. Treleaven: I would not use the term blackmail but others might, correct.

Second, I would think that my friends--the official opposition--could get their way, make their point, bring attention to whatever they wish to bring attention to in some less childish way. Right now they are in the midst of running the calendar on Bill 60 and on the Industry and Tourism bill. Both opposition parties are in the midst of running the calendar, there is not much doubt about that--not the clock, the calendar.

Mr. Epp: I do not think you know what you are talking about.

Mr. Treleaven: I might say to the member for Waterloo North that it is pretty obvious--even to a new boy with only a year's experience--that you are running the calendar. I would suggest that you certainly could find some other way of making your point. Eight hours will let you protest and get the media coverage to make your point without running it for days on end.

I would characterize the Liberal position, really, as like a

little boy who goes home with his bat and ball. If he cannot get his way he takes the bat and ball home so that the game has to stop.

Really, it would be a much better position to take to try harder. You know, number two always tries harder. So perhaps they should try harder, with a little more skill in the game of baseball, rather than taking the ball and going home.

Mr. Chairman: He did not interrupt you, now you be quiet.

Mr. Mancini: Mr. Chairman, I appreciate that, I accept that.

Mr. Chairman: You have to listen.

Mr. Mancini: Thank you, Mr. Chairman. I appreciate your ruling.

Mr. Chairman: It is not a ruling.

Interjections.

Mr. Treleaven: I would not presume to get into the personal life of any of the members here.

I was in my riding last night and two very strong Liberals expressed extreme displeasure to me at the ringing of the bells and the wasting of the time of the Legislature and of the members of the House. I believe that permitting this kind of "copycat-ism" to continue is going to bring more disrepute on the Legislature. We already have enough with the shenanigans and the nonsense that goes on in the House as it is now. This will bring the House into more disrepute.

My second last point is that I would support this. The eight hours are arbitrary and I don't care whether it is six or 10 or whatever it is, so long as there is a definite time limit to it.

I want to support the resolution and suggest that it go to the Legislature where it can be debated in full view of the media, the press and the public. Everyone can have his or her say on this in the House and democracy can more or less take control; let's have the media and the people have some input on this as to whether or not they like an eight-hour bell.

At this point eight hours is simple; it can be understood without getting into the hieroglyphics of Mr. Breaugh's concoction for this thing being solved. I like eight hours, it is simple, everyone grasps it.

If it requires amendment later, then it can be amended. It can be fine-tuned, you can put your boilerplate on it if you wish, but right now eight hours can be understood, it is a concept that people can understand.

11:10 a.m.

In conclusion, I would move an amendment to this motion that,

if this carries today, the reference to the Legislature be deferred until the fall of 1982 so that some type of steering committee, informal session or group of this committee might get together and perhaps try to reach some compromise over the summer regarding Mr. Breaugh's ideas.

I believe the atmosphere is rather heated at the moment. Therefore, if it passes today--and I hope it does--let the reference to the House be deferred for a cooling-off period and also perhaps to try to work out a compromise that is agreeable to all three parties, still having some definite rules set.

Mr. Charlton: I start out by saying that I do not think my tie is quite as tight as Mr. Mancini's. I would like to direct my remarks to Mr. Rotenberg, since he is the only government member of this committee who has been here over the last number of years and been through a number of the procedural discussions we have had on the standing orders of this House.

I would like to remind him, without quoting him exactly, of his own words on a number of occasions when we have discussed changing the standing orders in this place. One of his very strong feelings over the years--and one of the arguments he used on a number of occasions to convince the opposition members of this committee on a number of matters--was that to change the standing orders without consensus will ensure that they do not work.

That is reflecting back to the comments that Mr. Breaugh made. He made one very relevant comment in his presentation and that was that the unlimited bells on reading of bills in this House has been a precedent--it is not in the standing orders but has been a precedent--in this House since the beginning.

For us to be here considering a change in the rules for the one occasion we had last weekend is a very, very major approach to the standing orders of this House.

Mr. Chairman: That is not entirely correct, Brian.

Mr. Rotenberg: It was brought up in this committee weeks ago before it was in the House.

Mr. Watson: It was brought up at the meeting of April 1.

Mr. Charlton: It has nothing to do with the April 1 meeting. There has been only one occasion when we have had a problem in this House, has there not?

Mr. Watson: I do not want to argue. What you said was that it was here because of last weekend. It was here because it was here on April 1.

Mr. Breaugh: When Mr. Rotenberg moved this motion at the April 1 meeting he made it clear that he would not put the motion unless it was acceptable to all parties, that he would withdraw it. There seems to me to be a slight change since.

Mr. Charlton: If I can continue, Mr. Chairman, I do not think it makes sense to either of the opposition parties to amend the standing orders as a result of one occasion.

I am not going to get into a partisan diatribe over what happened last weekend. The Liberals made their decision. They did what they felt was the right thing to do and, whether I agree with them or not, I agree with their right to have made that decision.

I want to refer us to the thing that started all this, which was the situation in Ottawa. It was the colleagues of the government party, which is now trying to put a limit in place, which caused the situation in Ottawa. I want you to think about that situation. Whether you necessarily agreed with what your federal colleagues did or not, at least they had a purpose and a strong feeling for what they did.

Their purpose was--and I direct my comments again to Mr. Rotenberg and to the discussions we have had here in the past in this committee. The feeling in the Tory caucus was that the Liberal majority in Ottawa was abusing the legislative process, that this huge, broad bill which caused the impasse in Ottawa was a serious abuse of the legislative process. They wanted to find, in a minority situation, because the opposition is in a minority, a way to force the government to split that bill--not to scuttle the legislation, but to split that bill--and they accomplished that. Whether any of us individually agree with the specific way in which they did that, they accomplished it. In the long run, it probably served the parliamentary process, not discredited it.

We have had one occasion in this House when the bell has rung and we lost a day and an hour and a half, whatever. The opposition--and Mr. Rotenberg has talked about this a number of times in different debates around different procedural matters in this committee--has to have, in a democratic process, some protections against abuses by a government majority.

Mr. Mancini pointed out, and I think quite appropriately, that if we oppose something we should go into the House and talk at length. The government has demonstrated they will allow that to happen when they are not concerned about time, but when they are concerned about time they will see that that technique is not effective. They will move closure when it is their will to do so and they will use their majority to pass that closure motion.

In my opinion, there are very rare occasions when the using of the ringing of the bells is a legitimate technique for delays around this place, but there are occasions when it is appropriate. The more things that happen around here to frustrate the opposition parties, the more occasions the opposition parties, either one or the other, are going to take advantage of whatever techniques there are in the standing orders to defend their positions and rights in the process.

Mr. Treleaven made the comment in his remarks that if there has to be an eight-hour bell on each second reading and perhaps on each third reading, so be it. I do not think Mr. Treleaven has fully thought that through. Mr. Treleaven does not understand, for

example, that in every session of this Legislature we are talking about 100, 120 or 130 pieces of legislation--

Mr. Treleaven: I fully acknowledge that.

Mr. Charlton: --and 100 times eight hours, just if we did it on one reading, is a lot of hours. Three hundred times eight hours is the whole bloody session and nothing gets passed. We will never know what they think about it.

Mr. Kolyn: We will let the public decide.

Mr. Charlton: None of us wants to get into that position.

Mr. Epp: Why did you not change--the people let you know they did not like it and you did not change--

Mr. Charlton: I am asking the members of the government party today to think very seriously about the real ramifications of what they are doing in reacting to one--in over 100 years--situation in this House and what those ramifications will mean for the future efficient operation of this Legislature.

Mr. Lane: I have always been one of those people who felt rules and laws were made to be changed, not necessarily to be broken, but I do not think we should ever put the Speaker in a position where he or she has to enforce an unwritten law. The standing orders as they now are have to be changed so the Speaker does have a written law to enforce if something happens. I am a little concerned that Mr. Breaugh would see fit to make a threat to use it every time it was necessary to vote.

11:20 a.m.

Mr. Breaugh: At least you understand.

Mr. Lane: I understand very well and I also understand we are as tough as you are.

Interjections.

Mr. Lane: We are just as tough as you are. If the vote comes at two o'clock in the morning, we will be there. But as far as I am concerned, that is not the way to run the government.

When this type of thing happens, it is also very difficult for the public to understand what is going on. Even though any given party may make some marks or lose some marks depending on who is assessing it, in the eyes of the public, parliament is being downgraded. They think they elected us to do a different job than fool around waiting for someone to come back and vote. As far as the public is concerned, it is rather a childish thing.

I do not think we should let it happen again, at least if we can prevent it from happening again. I personally would like to see a consensus of all three parties, if possible. If you were the government, you would do certain things to aggravate us if we were

the opposition. That is the name of the game and it will always happen.

I can remember back in 1971-75 we even had a lot of fun at times. Some of you were not around then, but some of you were. But since majority government has come in we seem to have lost that congenial feeling towards each other and it is never any fun here any more. I can remember the good old days when people from all parties got together outside the House and had a lot of fun--

Mr. Chairman: You cannot even get a good poker partner now. They were all defeated in 1980.

Mr. Lane: I suppose the answer to that is probably a good number of the members in the House today never knew a majority government before this one. I happen to have known one. It could be a lot more fun than it presently is.

Mr. Breaugh: That is a promise.

Interjections.

Mr. Lane: I personally would have to support the amendment which has been put forth. I have no reason to think it should not be amended and changed in some manner or other, but I think we have to have a written rule. I do not think we can ask the Speaker to ever enforce an unwritten rule. That is not fair.

Mr. Epp: I should indicate from the outset that I have no intention of supporting this amendment before us. I do not imagine that will come as a surprise to anyone. This morning, with a full turnout of the government members, they have all been instructed to vote for this motion and to get it before the House as quickly as possible.

It just brings back what Mr. Davis has said in the House at least a dozen times since March 19, "Remember the realities of March 19." They will use their jackboots, or whatever, to get this thing through the House without the co-operation of the other members. The government members have indicated that.

It has been indicated that it is the first time any bell-ringing has taken place in 115 years. The government members seem to have some kind of phobia or some kind of problem with this. They certainly did not rush to open up the orders when they used closure and to say: "No government should ever use closure because you are cutting off democratic debate. We want to be fair with the opposition. We want to be democratic." These words were used by the government members and yet they went right ahead and voted as they were instructed on closure, cutting off the free will of the people's representatives to discuss a particular touchy issue.

Mr. Treleaven: After 54 speakers--

Mr. Chairman: Ad nauseam.

Mr. Epp: They thought that because Suncor was so embarrassing to them and because the public was always reading more

about it and hearing more about it by bringing in closure they would cut it off. It backfired on them and by bringing in closure they were more embarrassed than ever. It reflects itself again in the budget the Treasurer (Mr. F. S. Miller) brought in last week.

When you are talking about matters that should come before the committee and saying you want to be fair, you want to be just, you want to be equal, why do you not talk about the amount of research funds that goes to the various political parties? Your mathematics are all haywire.

Mr. Treleaven: Point of order.

Interjections.

Mr. Epp: There is nothing out of order here.

Mr. Treleaven: No, point of order. The standing orders state that you are supposed to restrict yourself to the realm of the subject under discussion.

Mr. Mancini: Who is the chairman here, you or Mr. Kerr?

Mr. Treleaven: I am putting a point of order to the chairman.

Mr. Mancini: The chairman did not object. Why are you objecting?

Mr. Treleaven: Because I am drawing attention to the standing orders, as is my right.

Interjections.

Mr. Treleaven: The member should get back onto the subject at hand.

Mr. Epp: I am speaking on the subject at hand.

Interjections.

Mr. Treleaven: Like he says, Mr. Chairman, he is new here and he does not understand the relevant points.

Mr. Chairman: I have allowed a certain amount of leeway, probably more than usual, in discussing this resolution. It is a controversial one, so I would suggest that there not be any objection to the fact that the member may stray off the point we are dealing with this morning from time to time. I am sure that the member will come back to the point now and conclude his remarks pretty soon.

Mr. Epp: Thank you. I have just been speaking on this for about two minutes, Mr. Chairman, and I still have a few points to raise.

I know you would be interested in this, Mr. Chairman, because anyone who has a grade 2 or 3 mathematical education knows that when

you multiply 21 by 10,000 it does not come out to 300,000. Yet that is what the New Democratic Party is getting in research funds. So what the government is using--and we are talking about this equality and democracy in action--when you are talking about research funds, we find the New Democratic Party is getting \$300,000, based on 21 members, and the Liberals, who have 33 members, are getting \$330,000.

Mr. Chairman: You realize, Mr. Epp, that is something that you can bring to this committee as a separate item at any time.

Mr. Epp: On average the NDP members are getting \$14,285 for research and the Liberal members are getting \$10,000. That is a difference of \$171,438 which we are being short-changed.

When you are talking about fairness and equality and so forth, that is real, and it is something that this committee and the government could change very quickly. Yet they have not rushed forward to bring any equality, any fairness to the system there. So that is one of my points.

I think that the other thing, as my colleague mentioned, is why have eight hours? I tend to relate eight hours to this new jet bringing the Premier from Florida to Ontario. There must be some relationship--

Mr. Mancini: By the time the limousine gets to the airport--

Mr. Epp: He has a limousine to take him to the airport. Flying the jet up here, he gets down here. He has dinner at La Scala and then he comes over here.

Mr. Chairman: You are straying, Mr. Epp.

Mr. Epp: They are provoking me, Mr. Chairman.

Mr. Chairman: If you can conclude your remarks on the motion, we would appreciate it.

Mr. Breaugh: He has got to go through Suncor yet.

Mr. Epp: By the way, I just happened to think if you were to bring in eight hours and you were to run out that length of time--the eight hours on every bill--you would be taking up about 2,400 hours or something just to do all the voting.

I understand that Mr. Rotenberg is in favour of that, because he is the one who recommended eight hours--

Mr. Breaugh: He is getting new orders in the hall from the government whip. He may not be in favour.

Mr. Epp: He may change that to seven and a half. But I notice he did not recommend five minutes, 10 minutes, or something of that nature. They have eight minutes in Westminster. I notice he did not recommend eight minutes. They have more members there, and they have a bigger parliament to account for.

Mr. Treleaven: We are more lenient. We are more democratic.

11:30 a.m.

Mr. Epp: It just takes that jet longer to get here, too. Needless to say, I am not going to support this motion, or the amendment.

Mr. Eves: I will try to keep my remarks fairly brief. Several points have been raised by numerous opposition members this morning.

I appreciate Mr. Edighoffer's suggestion that--having looked at other jurisdictions in Canada--we seem either to have short bells or no time limit at all, but I do not think that this precludes this particular Legislature, this committee or our House from taking the lead in perhaps being more practical in our approach to the rules.

I am somewhat concerned about Mr. Breaugh's attitude and I trust that it does not reflect the attitude of his entire party.

Mr. Breaugh: It does.

[Laughter]

Mr. Eves: I would consider his threat, as he chooses to call it, very irresponsible. I think that any member stating that he or his party will purposely inconvenience and delay the House without regard to the merits of the particular piece of business or legislation before the House is extremely irresponsible.

Mr. Breaugh: We would never do that. We would just use the rules that you write.

Mr. Eves: With respect to Mr. Mancini's comments this morning, I think that the coincidence here is that, really, the shoe is on the other foot, Mr. Mancini. This matter apparently was discussed and brought forward to this committee on April 1.

Mr. Breaugh: He sure as hell does not have two left feet.

Mr. Eves: The part really that I find somewhat questionable about this whole episode is that--after this matter was discussed by this committee--the Liberal Party decides, several weeks later, to choose to walk out and let the bells ring.

If there is a coincidence at all, it is that the Liberal Party has chosen to take this action after the matter was discussed by this committee. I think that Mr. Mancini's remarks this morning would indicate that he is must more interested in politicking than in discussing the merits of the proposed motion before us.

Mr. Breaugh: Just a small point of order. While Mr. Eves is discussing coincidence, perhaps he could explain to me why the government rewired the entire bell system prior to last Friday so that only one bell would ring when the bells were ringing internally. Perhaps he could explain that coincidence.

Mr. Eves: I have no idea, Mr. Breaugh. I did not rewire the bell system.

Mr. Chairman: You must admit, Mr. Breaugh, that, mercifully, it was a good idea.

Mr. Breaugh: It did not bother me. In Oshawa, you could not hear them.

Mr. Rotenberg: I would not have been able to sleep in the chair Sunday morning if the bells were all ringing.

Mr. Breaugh: You demonstrate an ability to sleep in the chair with all kinds of noises, I am sure.

Mr. Eves: I not only know Mr. Mancini's comments about Premier Davis and his orders to the Progressive Conservative members of this committee to be totally inaccurate, but I find them quite ridiculous and humorous at best.

Mr. Charlton's comment that this incident, or type of incident, has only occurred once in over a 100 years is quite correct. I might remind him that closure has only been used in this House in once over a 100 years as well. I think that tradition and precedent are very important--

Mr. Charlton: Are you suggesting we get rid of the closure rule?

Mr. Eves: --and they are not too be lightly dispensed with.

Mr. Chairman: Order. You were allowed to speak without interruption. Would you allow other members, please, the courtesy of being able to make their remarks without interruption and heckling and all that sort of thing?

Mr. Eves: Thank you, Mr. Chairman. I think that tradition and precedent are very important and not to be lightly dispensed with, but I do not think that this means that we should not try to improve the rules or make them more practical or efficient without limiting the right of debate.

I might point out that this rule will not limit debate. It will merely set a time limit on when a vote is to be taken when one has already been called or asked for. I think that the members of this committee and of the House have a responsibility to direct the Speaker as to proposed rule changes and to make the rules of procedure more efficient.

However, having listened to the member for Oxford this morning, I would agree that a cooling-off period may well be in order. Thank you.

Mr. Ruston: Thank you, Mr. Chairman, for giving me the opportunity to say a few words on this matter, having sat on the procedural affairs committee--

Mr. Rotenberg: On a point of order, do nonmembers of committee speak, or do they need a motion to allow them to speak?

Mr. Treleaven: They can speak any time they want.

Mr. Rotenberg: I would not want to cut out his right to speak. I just want to make sure he is in order.

Mr. Chairman: He is in order and he has a right to speak.

Mr. Ruston: I could comment on what you are saying, but I would rather not. I want to give some common sense--

Mr. Rotenberg: I was going to say--

Mr. Ruston: I could very well tell you what the procedures used to be in the procedural affairs committee; you could not be replaced, you could not put in a replacement, and now you have that so you can.

Mr. Rotenberg: I was going to say if a motion was required to allow him to speak, I was prepared to move it.

Mr. Ruston: I am sure you are in order.

Mr. Rotenberg: Of course I am.

Mr. Ruston: I was so rudely interrupted, Mr. Chairman. I sat on the committee for a number of years with the member for Oshawa (Mr. Breaugh) as chairman, and I do not think in my years of being on the committee that I had a meeting quite as disorderly as this one, but I would not blame that on the chairman, I am sure.

Mr. Treleaven: It must be his fault.

Mr. Ruston: He managed quite well in keeping it fairly nonpartisan if he could. However, things have changed apparently.

We rush into something to change something because something happened that has never happened for 110 years. I farmed a long time and if some strange thing happened one year, I never changed my system immediately to go on what happened that year because, sure as hell, as the member for Chatham-Kent (Mr. Watson) will tell you, things would change the next year. It might rain for a month this year in May and next year it will rain for a month in June, so you go according to what your usual intuition is.

Mr. Watson: Did it rain last night?

Mr. Ruston: No, it did not. It is still dry.

Mr. Chairman: You fellows just read your almanac and carry on.

Mr. Ruston: What I am saying, Mr. Chairman, is something happened and really there was no time lost, if anyone wanted to look at it, as far as the Legislature is concerned. Sure, it was closed about five hours and 15 minutes.

If you were to look at some of the rules that we should be looking at and go and look at the Morrow report--of course, many of you here would not know who Mr. Morrow was but he was the Speaker of the House and then chairman of a committee recommending new procedures. Many of his recommendations have been looked at but many of them have never been accepted as of yet, and many of them are very good.

I think you are making a mistake in rushing in immediately after the fact. I do not think you can look at it realistically.

An interesting point was that one of the members said the public looked on very distastefully when the House was closed for some time. If you are on the side of the government, it seems to me that would be the least of your worries. You could blame it on the opposition.

Mr. Treleaven: We do, we do.

Mr. Ruston: So you are not changing it for that. There are other reasons, I am sure. Otherwise the ideal thing is to say, "Well, we can't help it, the opposition will not let us go ahead." I think you have other ulterior motives for changing it, I am sure.

I think we should be looking at participation in the House as far as time elements go. A person can get up and speak for two hours on a throne speech or a budget speech, any time he wants whenever that debate is on. There is no fair rotation system. Someone in one party might get up and speak for 30 minutes and someone in the other party might get up and speak for three hours, so that spoils the next opportunity for another party that tries to be reasonable and keep its speeches within limits.

I had the same thing in the last throne speech debate. We were allowed eight days, but a day can only be two and a half hours. We go around in a circle, every other speaker from each party, and if you have 33 members, and the other party 21--of course, I know the government has 69, but there are so many of them you rotate. But if you rotate on that basis and I tell my speakers, "Now listen, keep it down to half an hour because they have other speakers who want to get on," and as soon as it goes to one of the other parties they speak for two hours, and that cuts the whole thing off. That is not fair, in no way whatsoever.

In Ottawa they have a limit which I believe is 20 or 30 minutes, but you can have longer with the agreement of the House. I have heard where Mr. Douglas and Mr. Diefenbaker and different people would perhaps be in full flight and someone would call to notice that their time was up. With the agreement of the House they could continue because, well, they were veterans and many people liked to hear them speak.

There is another thing we should be looking at very seriously. I think if we really wanted to get the business done in this House, let us look at some of these ridiculous things.

That system has been in forever, as far as I know. I have been here for it seems a long time, nearly 15 years. It is a complete waste of time.

11:40 a.m.:

Let us look at the rules pertaining to the operations of the House instead of just one five-hour bell. Really only five hours of actual House time is all that was lost in the whole weekend.

There are other things that should be considered as well. The main thing is that we should take a new look at the Morrow committee recommendations and the time element in second readings of bills, throne speeches and budget speeches. Actually the leadoff people and the windups would have longer times. We could really make this place be a little more of a government House where people participate.

Another thing is that in many of the provincial legislatures they have very short bells. They say the reason they have short bells is the members are in the House where they are supposed to be.

If there is going to be an eight-hour bell here, in eight hours people can go home and have a sleep or go for dinner or jet to Florida in that new jet. To just say it is going to be eight hours, I think some of you had better just sleep on that suggestion for a while and consider just what you are really doing. You are not going to solve any problems in the operations of this House by putting that in.

Mr. Watson: Thank you, Mr. Chairman. I appreciate the comments of Mr. Ruston in his experience when he talks about having the agreement of the House to do things. People will only be governed to the extent that they allow themselves to be governed, and I think that is the way within our own Legislature.

I am a little bit upset and it has been expressed by the threats that Mr. Breaugh has brought forward and which have apparently been agreed to by the members of the official opposition. I would like to counter that in one way by saying that if you are prepared to give us the undertaking that you are going to do it, are you in fact prepared to give us the opposite undertaking that you will not cause the bells to ring for purposes other than those for which they are intended, which is to allow the whips to get their members into the House?

That is the purpose of the bells. It is not intended to cut the government or the opposition off from getting their members. It has been an agreement over the years that the purpose is obviously so that the people can get all the members who are available for a vote. I think we all understand that.

The problem with the situation which arose in Ottawa and here was that the purpose for which the bells were used was something else altogether. Really what I am asking of the opposition parties is if you want us to put this off or table it or put it back, you are prepared apparently to give us an undertaking that if this is

put through you will enforce it. Are you prepared to give us an undertaking that you will not use the bells for purposes other than those for which they are intended?

That is all I want to say.

Mr. Chairman: Did you want to say something more?

Mr. Charlton: I have an amendment, Mr. Chairman.

Mr. Chairman: All right.

Mr. Treleaven: Excuse me a moment for a procedural matter. I was going to change the amendment here to clean up the procedure. I was prepared to withdraw my amendment on the condition that Mr. Rotenberg be permitted to amend the original motion to make it a little cleaner. It has the same intent, but puts it through to the fall.

Mr. Breaugh: Now come the instructions from the whip. Let us hear it.

Mr. Rotenberg: What I propose to add to the motion is, "and that the report be presented to the House with a recommendation that debate on the report be deferred to the fall sitting of the House."

Mr. Chairman: That is to be added to the original motion?

Mr. Rotenberg: Yes.

Mr. Treleaven: If that is acceptable to the committee, I will withdraw mine.

Mr. Rotenberg: That was the sense of Mr. Treleaven's motion.

Mr. Rotenberg: May I speak to that?

Mr. Chairman: It is Mr. Treleaven's amendment.

Mr. Rotenberg: He is withdrawing it.

Mr. Treleaven: I will withdraw, of course, on the condition it is permitted that that be added to Mr. Rotenberg's motion.

Mr. Rotenberg: I want to make an amendment that is--

Mr. Epp: Let us run this place democratically. You cannot make an amendment to your own motion.

Mr. Rotenberg: I am permitted to make an amendment at any time.

Mr. Epp: You can make an amendment to the amendment to the amendment.

Mr. Treleaven: You cannot make an amendment without my withdrawing the original amendment.

Mr. Epp: Why do you not call Bill Davis and ask him what he wants?

Mr. Chairman: Which one of you is making the amendment?

Mr. Treleaven: I will only withdraw my amendment on the condition that his is permitted in place of it.

Mr. Rotenberg: Mine is permitted.

Mr. Treleaven: When I have got the bird in the cage, I am not going to open the door until I have a replacement bird to put in there.

Mr. Chairman: Is it all right by the committee that the amendment be tabled as part of the original motion?

Mr. Epp: Why do you not withdraw the whole thing and go back?

Mr. Breaugh: Which amendment is being--

Mr. Rotenberg: The one I just read.

Mr. Chairman: The amendment that was just read, the words to be added to Mr. Rotenberg's motion, "and that the report be presented to the House with a recommendation that debate on the report be deferred until the fall sittings in the House."

Mr. Breaugh: And Mr. Treleaven has withdrawn his amendment, is that it?

Mr. Chairman: Yes, on the understanding that it is agreeable that this amendment, these words, be part of the original motion. If the committee has any comment on that, please go ahead.

Mr. Breaugh: If I could, Mr. Chairman, I do not believe the committee has a right to force a member, Mr. Treleaven in this instance, to withdraw something. I have not heard him say he would withdraw his amendment. As a first order of business, Mr. Treleaven would have to withdraw and then, of course, subsequently Mr. Rotenberg may move any amendment he so desires. As I understand the process, Mr. Treleaven has put an amendment and he has not indicated a willingness to withdraw.

Mr. Treleaven: Fine. Mr. Chairman, I will withdraw my amendment if the chair will permit me to make another amendment if this does not go through.

Mr. Epp: The members of the government party know they have a right and an opportunity to present motions when they wish. If they are uncertain as to what they want to do, why do they not withdraw both the amendment and the original motion and we can

proceed next year or the year after or whenever they are prepared. We will deal with their motion and amendments at that time. They have the right to do it; why do they not do it?

Mr. Chairman: They realize that. I asked the committee if it is prepared and willing to accept the amendment as part of Mr. Rotenberg's original motion. Mr. Treleaven, I would suggest you make the amendment.

Mr. Treleaven: Yes. Then, Mr. Chairman, I will withdraw the previous amendment, my previous ill-worded amendment.

Mr. Chairman: Mr. Treleaven moves that Mr. Rotenberg's motion be amended by adding the following words, "and that the report be presented to the House with a recommendation that debate on the report be deferred until the fall sittings of the House."

I would suggest, Mr. Treleaven, unless you are prepared to yield to somebody else, that you speak on the amendment.

Mr. Treleaven: Thank you, Mr. Chairman. My sentiments are obvious. I would like to defer it to a less heated time so that cooler heads can take place in the meantime.

On one last little comment Mr. Ruston referred to, if something happened once, he does not like to react to that. If the crop goes one way one year, he does not change his method of cropping. That reminds me of a client who had his milking cattle tied up with the electric type bar that goes behind their backs.

Mr. Ruston: Is this in the motion?

Interjections.

Mr. Chairman: Order.

Mr. Breaugh: I know where he is. I recognize the smell.

Mr. Watson: This is to the motion.

11:50 a.m.

Mr. Chairman: Mr. Charlton, did you want to say something?

Mr. Charlton: I have an amendment to move, but we should probably deal with the amendments on the floor first.

Mr. Chairman: All right.

Mr. Rotenberg: As the original mover of the motion, I thought it might have been better to have the last part as part of the motion because I certainly accept it.

I just want to say several things as a result of the comments. I have been accused, as the mover of this motion, of rushing this through here as a reaction to what happened over the past weekend. I would point out I made the formal motion on April 1. I believe we discussed it at a previous meeting of this committee. I brought it

in then as an attempt to have this matter discussed and resolved within this committee and this Legislature before an incident like last Friday had happened. I said that in my remarks.

In no way, Mr. Chairman, is the motion I have brought forward a reaction to last weekend's problem. It is a reaction to what happened in Ottawa and a reading of the rules, and having the Clerk and the Speaker before this committee telling us--and as the Liberals agree, and I appreciate that--our standing orders are silent in this matter.

It was a result of really wanting to bring in something, having it discussed and having it dealt with before an incident happened. That is certainly not rushing it. It was not I who had brought it back today; it was the resolution we had six weeks ago which said it would come back in six weeks. It is a happy or unhappy coincidence it is here before us today. In some ways it might have been much better had it been here last week.

I have tried my best not to be political in the remarks I have made on this. We should try to deal with procedure as nonpolitically as possible. I know it is not possible. I do appreciate what has gone on, and although the Liberals, who disagree with us, which is their right, have not presented an alternative, maybe an alternative should be that we should put in the rules to clarify, if that is what you want, that bells are unlimited. That is the effect of the motion.

Just in passing, Mr. Ruston has discussed other time limits on debate in the House and I really welcome his comments. I would like at some time, when there is less emotion in this committee, to have this committee sit down and deal with time limits on budget debates, estimate debates and all those sorts of things. It is a division of time which is now done by precedent and House leaders' agreements from time to time. Maybe we should formalize that. I would be quite willing to discuss that and I think it is a point well taken.

The only alternative put forward is Mr. Breaugh's. I understand his alternative and I think we should understand it, but I do not think it is viable for this reason. Let us take what happened on Friday. Suppose at one o'clock on Friday the Speaker said: "It is now one o'clock. The House now adjourns till next Monday at two o'clock." There are two points about that. One, of course, is had the bell been ringing for only six or seven minutes, it would have wiped out the vote at that stage, at any time, because often bells ring beyond the adjournment time.

More important, we would have come back on Monday at two o'clock, had a question period and then Mr. Ashe would have stood up again, either on a deferred vote or said, "I introduce the bill again." People would have asked for a bell and walked out. We could have had a series of days with question period--whatever there was going to be on the sales tax--but still not have solved the problem of getting that matter to a vote.

Interjection: Question period and then bells.

Mr. Rotenberg: Question period and bells. We would have question period day after day. I do not think that is a viable alternative to the situation. I do not think the Speaker had the right to do that. At least the Liberals, the Speaker and the Clerk agree, if you want to put something in the standing orders that at adjournment time if the bells are ringing the House may adjourn, that alternative might be discussed, but I really do not think it is viable.

The point of my motion, which I made six weeks ago, was to get this matter up before the House for proper discussion and try to find a way to solve it. I recognize the point made by Mr. Charlton that we should try at all times to get some consensus in this committee about rules. As he has said and I have said--and he quotes me correctly--rules that are not done by reasonable consensus will be a lot less observed and will bring more trouble. That is why, before Mr. Treleaven made his speech, it was my intention to have this report sent up to the House and then to have it sit with the House leaders as it would normally do.

It was my intention and my hope--I did not put it in the motion, but I think it should be in the motion--in effect, to say let us get it formally before the House and let it sit up there for a while. There is no intention to ram this through. This was before this committee six weeks ago and coming back with it six weeks later is not ramming it through.

It is not my intention, agreeing with Mr. Treleaven--I hope it is our House leader's intention and we will pass this on to him--to ram it through the House. The intention is to send it to the House and have it on the Order Paper as a report, sit there and then be there as an alternative so it can be discussed.

Mr. Mancini: You want to ram it through. That is exactly what you want to do.

Mr. Treleaven: He did not say that.

Mr. Mancini: He wants to ram it through the committee and through the House.

Mr. Rotenberg: Had I wanted to ram it through committee, I would have not had a six-week adjournment here. Had I wanted to ram it through the House, I would not be suggesting it go as a report to the House and then just sit there until the fall so that everybody would have had another chance in a cooling-off period to do it.

Mr. Chairman, with respect, the rules are now silent--maybe it has only happened once. I think one way or the other it is incumbent upon us, as a procedural committee, and incumbent upon this Legislature to have the rules clarified so that a Speaker is not put in a position where different people give him different advice. The rules should be such that everyone understands them, that everyone knows what they are and we know where we are going.

If someone wished to make a motion to clarify rule 94, which says, "When the members have been called, then the Speaker again

shall put the question," if you want to put a reference in there that he does not put the question till the three whips walk in, if you want to put a reference that there will be unlimited bell ringing and debate it, that will be an alternative. I may not support it, but we have got to put something in the rules so that the rules are clear because they are not. This is one alternative.

For those reasons, I would like this motion to go through so there is a report to the House which, as I say, would sit on the Order Paper for three or four months to let everybody have a chance in a cooler time to deal with it and that it be dealt with in the House some time in the fall.

Mr. Chairman: Any further discussion on the amendment?

Mr. Breaugh: Mr. Chairman, I have--

Mr. Chairman: Sorry. Mr. Epp was ahead of you, Michael.

Mr. Epp: Yes. I would like to speak briefly to it.

I notice that Mr. Rotenberg has indicated that there is no alternative that has been presented. Our position has been that we have confidence in the Speaker. We supported the Speaker's ruling the other day. We did not take exception to it, as some of the members have indicated today that they have taken. There were alternatives, and we have confidence in the Speaker.

Our position has been very clear. We think things should stay the way they are. It has been used once in 115 years and we do not think that is necessary justification to change a rule in the House.

Mr. Watson: Are you prepared to give us an undertaking that it will not happen again?

Mr. Epp: Are you prepared to give us an undertaking you are not going to bring in a budget the way you brought it in the other day for closure?

Interjections.

Mr. Chairman: Order.

Mr. Epp: I had the floor and I did not interrupt you. Let us go back to the origin of the bells ringing. It was the budget.

Mr. Watson: No, it was not.

An hon. Member: Certainly it was the budget.

Mr. Epp: It was a budget item that the Minister of Revenue is bringing in on sales tax, Mr.--what ever your name is--Mr. Watson.

Mr. Treleaven: He does not understand either.

Mr. Epp: The other point I want to make is that I do not think you can determine the business of the House next fall. I think

this motion is out of order. you cannot say this will be debated next fall because you cannot determine the business of the House and the motion does not say that. The motion is out of order because it determines the business of the House next fall and you cannot do that.

Mr. Chairman: This is a recommendation. I consider the motion and amendment are in order.

Mr. Epp: No. You will have to read it, but I'm sure it says this will be debated, not recommended.

Mr. Rotenberg: It is a recommendation that the debate and the report be deferred until the fall. It is a recommendation to the House.

Mr. Chairman: Mike, have you got something more you want to say?

Mr. Breaugh: I appreciate that the amendment offers me an unusual opportunity. I can sit as jury on my own execution and I would vote for this amendment if I believed it was really going to do me a lot of good to have the execution carried out next fall some time.

On reflection, I think I would prefer not to vote for my own execution, whether you do it now or next fall. It strikes me that if the intent of the amendment is to provide for a cooling-off period, the way to achieve that, in my view, would be for Mr. Rotenberg to withdraw his original motion, to stand it down for six months and let us consider it then.

If that is the intent, then it seems to me to make it nice and clear that this is what should happen and that we should not proceed with this amendment now.

Mr. Chairman: All right. You have heard the motion. I will read the motion and the amendment together so that you have it firmly in your mind.

Mr. Rotenberg moved that the standing orders be amended by adding thereto the following standing order:

Except as provided in standing orders 2, 63, 64, 94 and 95, when the members are called in for a recorded vote, the division bells shall ring until the whips return to report to the Speaker that the members are ready to vote, but at no time will they ring for a longer period than eight hours, at which time the Speaker will call for the recorded vote of the members then present whether or not the whips have returned, and that the report be presented to the House with the recommendation that debate on the report be deferred until the fall sittings of the House.

12 noon

Mr. Breaugh: I am going to ask, under section 94 of the standing orders, that we have a division on this matter.

Mr. Edighoffer: I think it is most important that we have a division on this because the following was very clearly stated by the person who made the motion on April 1--and I would like to have this on the record before the vote is taken-- "At the end of discussion I will move that the matter be tabled at the discretion of the chairman to bring it back after everybody has a chance to talk to the caucuses. The one thing I do feel about this and any major procedural change in our standing orders--this is a personal opinion and may not be shared by all members of my party--is that standing orders are something that are a little different to anything else we do around here. Unless we have the consent of all parties to a change in standing orders, we really cannot do it."

Mr. Chairman, I recall, when this committee was set up a year ago, it was agreed by the committee that the standing orders recommendations from this committee would go forward to the House in a package. That is not what we are doing in this case. Therefore, I cannot support it.

Mr. Chairman: Do you want to reply to that, Mr. Rotenberg, as I believe Mr. Edighoffer was quoting you?

Mr. Rotenberg: Just briefly, Mr. Chairman. As I indicated, I prefer consensus, of course, and that is why I say I did not push the motion six weeks ago. I gave lots of time for people to come up with alternatives or to consider the matter.

There has to come a time, though, when if you cannot get consensus, you have to do what is right.

Mr. Mancini: That is not what you said at first.

Mr. Chairman: Are you ready for the question?

Mr. Breaugh: On the question, I would appreciate the chance to get my members in.

Mr. Treleaven: I would also like, under standing order 89(c), that the same division, the same 20 minutes, count for the latest amendment of Mr. Edighoffer as on Mr. Breaugh's motion for a division. I want to forestall having one division and then a second division call when we get back.

Mr. Mancini: Where did you get that idea?

Mr. Epp: Do you unilaterally interpret the rules for your own sake? What kind of committee is this?

Mr. Treleaven: I have the right to read the standing orders and interpret as I see fit what I see as potential loopholes coming. Mr. Breaugh has asked for one division, and I have asked for the same division to carry on with regard to the amendment as we call in our members as on the original motion of Mr. Rotenberg.

Mr. Epp: You are changing the rules.

Interjection: He has got a storm-trooper mentality.

Mr. Chairman: Order, please. Standing order 89(c) provides for a maximum of 20 minutes before the vote is recorded. Is there any particular time--are the members wishing to use the maximum or are we suggesting something less than that?

Mr. Rotenberg: I think we will go along with whatever Mr. Breaugh suggests. He is entitled to it.

Mr. Breaugh: Go back to the standing orders.

Mr. Chairman: Do you want to wait for the 20 minutes? All right.

Mr. Treleaven: Mr. Chairman, are you ruling on mine as well?

Mr. Chairman: I would rule when--we will meet here then at 12:24 p.m., I would say, from the look of the clock.

The committee recessed at 12:04 p.m.

12:24 p.m.

Mr. Chairman: I think we will wait for a few seconds to see if the New Democratic Party members are coming back.

Mr. Lane: While we are waiting, can I ask for a point of clarification? Something interested me just before we rose for our little recess.

Mr. Edighoffer was talking--and I am a new member of the committee so I would like to be enlightened on this--about the fact that we had agreed at one point to bring forth a package to the Legislature at some future date, not an individual recommendation. This is the first time that I have heard of that particular agreement. I was wondering is there was anything I could be filled in on. I have great respect for the gentleman that--

Mr. Edighoffer: If you look over the comments on the committee last spring, I think you will find it.

Mr. Chairman: I see a quorum, gentlemen, and I believe the 20 minutes have gone by. I will therefore ask for a recorded vote on the amended motion. I have read it to you and I believe you are aware of the wording of the amended motion.

Mr. Epp: Mr. Chairman, is there any way you can leave this vote for another time to give them an opportunity to come? I have never seen a vote taken in a committee without the presence of the three parties. I know the rules say after 20 minutes and I guess that 20 minutes is up, but I find it difficult to vote--

Mr. Mancini: Why do we not have the clerk call and see if they are on their way?

Mr. Chairman: Actually it was the suggestion and concurrence of one of the members of the New Democratic Party caucus that we have a recorded vote and wait the maximum of 20 minutes. It is now 22 minutes. They are aware of that. They were here when that discussion was carried on and ruling was made when we adjourned. Unless I can hear some other good reason, I am going to call for the recorded vote.

Mr. Epp: The motion here says people should have eight hours to vote, so I am just wondering--

Mr. Chairman: We are talking about standing order 89(c). All those in favour of the motion, as amended, please raise their hand. Record the names.

The committee divided on Mr. Treleaven's motion which was agreed to on the following vote:

Ayes

Eves, Kolyn, Lane, Rotenberg, Treleaven, Watson.

Nays

Edighoffer, Epp, Mancini.

Ayes 6; nays 3.

Mr. Chairman: We will now vote on the main motion as amended?

Mr. Epp: We have those 20 minutes, do we not, for another recorded vote?

Mr. Chairman: It has to be requested.

Mr. Epp: May I request a recorded vote?

Mr. Chairman: Yes, we will have a recorded vote. Do you want to wait another 20 minutes? All right.

Mr. Mancini: We want to give the NDP a chance to vote.

Mr. Chairman: I would say we come back at 12:50 p.m.

The committee recessed at 12:29 p.m.

12:52 p.m.

Mr. Chairman: Gentlemen, it is a couple of minutes past the time we set to vote on the motion as amended. I will therefore call the question.

Mr. Epp: Before you call the question, I drew your attention last time to the absence of one of the parties. I draw your attention to it again. I regret that you are proceeding with this vote at this time in view of the fact that the third party is not present. They may be absent for one reason or other.

I wish very much that you would not proceed on this basis. I will vote on the motion, but I do it somewhat under protest, taking into consideration the fact that the third party is not present.

Mr. Chairman: As you know, Mr. Epp, we set the time of 12:50. It is my understanding that the members of the New Democratic Party who are members of this committee are aware of the time for this recorded vote and apparently they choose not to be present. I will ask that the vote be recorded.

The committee divided on Mr. Rotenberg's motion which was agreed to on the following vote:

Ayes

Eves, Kolyn, Lane, Rotenberg, Treleaven, Watson.

Nays

Edighoffer, Epp, Mancini.

Ayes 6; nays 3.

Mr. Chairman: Gentlemen, what is your pleasure? Will we present the report to the House for consideration pursuant to the wording of the motion?

Mr. Rotenberg: That, I think, is automatic.

Mr. Chairman: There are some options. I think the important thing is to present it to the House for consideration.

All in favour of that? Carried.

The committee adjourned at 12:54 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REPORT ON WITNESSES BEFORE COMMITTEES
NAMING A MEMBER

THURSDAY, JUNE 17, 1982



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breagh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
Piché, R. L. (Cochrane North PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Substitution:

McLean, A. K. (Simcoe East PC) for Mr. Johnson

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher

From the Ministry of the Attorney General:
Stone, A. N., Senior Legislative Counsel

LEGISLATURE OF ONTARIO
STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, June 17, 1982

The committee met at 10:15 a.m. in room 228.

REPORT ON WITNESSES

Mr. Chairman: I see a quorum, and call the meeting to order.

The main item today is the consideration of the report of the subcommittee on the Ontario Law Reform Commission report on witnesses before legislative committees.

You all have a summary of the recommendations of the committee. You should have in front of you some amendments to the Legislative Assembly Act that are being proposed, and also matters that would be included in the standing orders or if not, why not.

Mr. Stone, do you want to come up to the front, in case there are some questions?

Where the hell did Dick Treleaven go? Scratch hell. I have been waiting for him, then he turns around and leaves.

Mike, you were sitting in on some of these, were you?

Mr. Breaugh: Yes, I sat in on the other committee's final session with the subcommittee. I believe the two items they are proposing are in front of you now. First is an Act to amend the Legislative Assembly Act, which would clarify some of the difficulties in the report from the law reform commission.

Dick will agree it is reasonable to say the proposals to the act will do what the subcommittee feels is important to be done and covers that. I do not find anything controversial in there. I think there was agreement in the committee on the changes to the act. There was no problem with that. The problem was in the second proposal.

Mr. Treleaven: There are two areas we sort of left open. Herb is not here. Clause 35(a) and subsection 35(1) were the two questions left open. We were all in agreement except for two matters.

Mr. Chairman: As to the amendments to section 35, you are repealing the whole section here, recommending the repeal of this section, are you?

Mr. Treleaven: Substitution.

What the new section 35 does is-- Right now you have to go to the House if you want a Speaker's warrant, period; at all times. You have to go to the House first, then the House in essence goes to the Speaker.

We started out with making one jump, that when the House was not in session you did not have to wait three months, or whatever it might be. You could go directly to the Speaker. This actually takes two jumps. It bypasses the House entirely and says you go to the Speaker directly at all times.

So we ended up with a direct jump, bypassing the House. The committee goes directly to the Speaker and asks him. Mr. Stone clarified that last May, meaning in this case the Speaker shall give the Speaker's warrant if the committee has followed all the proper procedures up to that point.

Mr. Chairman: Your new subsection 35(1), stating "the assembly may," you are not bypassing the assembly there?

Mr. Breaugh: The only difference is that in subsection 35(3) what is recommended in this change to the act would be that there is one process for a committee seeking a Speaker's warrant. As you know, there are now some variations on that. A select committee has a different approach to a standing committee. When the House is in session there is one approach; when the House is not in session there is another approach. If I read the consensus in the committee yesterday, it was that there be one uniform process, no matter whether it was a standing or select committee, whether the House was in session or not, and that is that, the House having decided that committees can seek a Speaker's warrant, the committee can then do that on its own.

The basic rationale was that when you go back to the House to argue this thing anyway, it will be only members of the committee who understand the ins and outs of it. They will be the most likely ones to argue it, and the rest of us will all be sitting around wondering what the argument is about.

The consensus was reached that if that is the case, they just will leave it in the committee and let the House decide initially if a committee can go for a Speaker's warrant. If they can, and that appears to be the case, then the debate about whether you get a Speaker's warrant or not is better done in committee.

Someone was pointing out the wording here appears to offer considerable latitude to the Speaker, but in law it does not. It really means the Speaker would have to find some grounds, some justification, for refusing to get a warrant; probably they would be that the proper procedure had not been followed.

Mr. Chairman: You are talking about subsection 3?

Mr. Breaugh: Yes.

Mr. Chairman: Yes, but that is also when there has been a request of someone to appear, and they refuse to appear. So you are saving the second reference to the assembly?

Mr. Breaugh: That is right.

Mr. Watson: Would someone explain your interpretation of the word "summons"?

Mr. Breaugh: Mr. Stone was proposing a little process that a committee goes through the grounds trying to get someone there. First you phone them up and invite them to come. Second, you get a little more formal about it and probably write them a letter, which would constitute a summons. Finally, if that did not work, you would get very formal about it and seek a Speaker's warrant in which you compel the person to attend. You go through three levels.

Mr. Watson: My question is--and I am going for this draft amendment here in the act--does "summons" have any legal impetus other than that it is just a little more formal than an invitation?

Mr. Stone: Yes, I think that is it. It is more formal than an invitation. It should be a formal document developed through the Clerk's office probably, advising a person they are commanded or required to appear before the committee on such-and-such a date.

The value of having a formal document is that it lets a person know they are know entering an area of command rather than of invitation only.

Mr. Watson: In essence, what is going to be the difference between a summons and a Speaker's warrant?

Mr. Treleven: Mr. Watson, number 5 in the little brochure--you notice the other one--this is a list of suggestions, for want of something better, to committees and to chairmen, of things it is suggested they follow. If you look at number 5 there, Mr. Stone has "inviting, summoning or compelling;" he is getting a little stiffer, as Mike says. The phone call, then the letter, then the Speaker's warrant; each one is getting tougher. It is leaving open how long before they actually went for a Speaker's warrant.

Mr. Breaugh: I suggest we cut down on the use of the Speaker's warrant, because that is a rather strong piece of action to take.

For the most part, people who come before committees do so because they want to. We have invited them to offer an opinion, or they have volunteered to participate in a hearing, or something like that. You certainly do not need anything there.

If they misinterpret it, whether they should actually attend or not, or if we decide we really do want that person, it seems a little tough to be running off for a Speaker's warrant all the time.

Perhaps just a formal invitation, a formal letter saying, "This is a legislative committee and we want to hear what you have to say," would solve the problem, so that only in rare cases would you attempt to get something which strongly compelled a person to attend before a committee. It provides a sort of middle ground.

Mr. Watson: I agree with your concept.

Mr. Chairman: Andy, the answer to your question is, in substance, that you need a warrant to summons.

Mr. Watson: Okay. Then my question is, what is the difference between a Speaker's warrant and a summons?

Mr. Treleaven: Really, none. The word "summons" is an order.

Mr. Chairman: The Speaker's warrant is the vehicle that makes it possible to issue a summons.

Mr. Watson: Then we have used the wrong word in "summons."

Mr. Chairman: Why?

Mr. Breaugh: I think perhaps Mr. Stone should try to clarify this.

Mr. Chairman: Otherwise it is an invitation, if you do not use the Speaker's warrant.

Interjection: With three lawyers, you would think we could agree on something.

Mr. Chairman: Okay, Arthur, you go ahead and clarify this.

Mr. Stone: The way this is drafted at the moment is as follows: If, after an invitation to appear--which would be done in a civilized and normal manner--the person does not appear, and the committee decides that the person must appear, that it requires this person to attend, then the committee would issue its own summons, without a Speaker's warrant or anything at this point.

This is a formal thing which would, in fairness, indicate to the witness that he is being commanded rather than invited. He would realize that he is entering into an area where there could be further consequences.

Mr. Epp: Let me interrupt. Who signs that summons? Is it the chairman, or what form does it take?

Mr. Stone: That could be developed. I do not think there is any form that would require it to be one way or be invalid. If it purports to be authorized by the committee, the clerk could sign it, or the chairman.

Clerk of the Committee: It is a more formal invitation than we presently extend to a witness: as you say, in the first instance, a telephone call. If they refuse, there is a formal invitation signed by the clerk, or it could be signed by the chairman.

As Mr. Stone said, a form could be developed similar to what the public accounts committee uses.

Mr. Epp: This is something like: First of all, you are asked to attend; then, "You shall attend." When the Speaker's warrant comes along, "You must attend." That is about the way it is, is it?

Mr. Stone: The Speaker's warrant is the base. It indicates to the witness that you have now set the requirements that are necessary to go to the House for punishment. That is the last step before going to the House. It "stages" it in a way so that the witness sees the inexorable approach of punishment without leaping into it too suddenly.

Mr. Epp: So it is on a motion of the committee, signed by the clerk or the chairman of the committee, for you to appear?

Mr. Watson: Should this more properly be called a formal request? Is it under the same thinking as--what comes to my mind is registered mail, and perhaps mail is not the way we are going to do it in our case. On the other hand, if you get an ordinary invitation to something, if you get a registered letter, you pay more attention to it.

10:30 a.m.

It may say the same thing. It still may not have any legal status. All they are telling you is, "I want to make sure that you got it and I mean business."

Mr. Stone: Yes. A word other than "summons" could be chosen. It is just to have a formal requirement. At present, I understand, the clerk may phone the person and nothing happens. Then he may write what is phrased as a letter, being an invitation. A gentle invitation from a legislative committee ought to amount to a command, but it does not say so, and I think there ought to be something that says so.

Mr. Watson: I think there are people who might be employed by a company, or even government employees or others, who do not want to come to a committee on the strength of a phone call. They would like something in their files to indicate why they had to be here. They want a formal letter which in effect says why they are absent from their other duties, or why they have to attend; or it may be altogether unrelated to what they are coming to the committee for.

Mr. Stone: That is true. It is also true, in court cases, that witnesses do not have to be subpoenaed, but sometimes a witness will ask for a subpoena so he can show it to his employer. It provides grounds for being away for a day.

Mr. Watson: Yes. That is what I am getting at there. Really, like George, I think there are two stages. I am wondering whether, if you are calling for a summons without the warrant authority, you are going to get yourself into a mess.

Mr. Stone: At present, until recently, committees were not normally given the authority in their terms of reference to summon witnesses. Years ago, I have known that they would go back to the House to get that, to have their terms of reference changed.

Now they are put in more as a matter of form. Here, instead of putting in the terms of reference, it refers in the Legislative Assembly Act to the fact that they all have that authority. Once you

have the authority to require the attendance of witnesses, as in subsection 35(1), subsection 35(2) says that after you have given your summons or your requirement to attend and there is disobedience of it, you go and get a Speaker's warrant.

Mr. Watson: Why would you say "by summons" rather than "by Speaker's warrant"? Why did you use that term at that point?

Mr. Stone: It is mainly just to stage the advance of the deteriorating situation. I do not know--that is what happens now, except that the invitation is not as formal as the word summons would indicate.

Mr. Watson: I am sorry I am nitpicking on this, because I understand what we want to do. I just do not think you have the right wording here to do it. You have said here that a committee of the assembly "may by summons."

Your interpretation of how you are going to use the word summons does not really require them. It says nicely, in a formal way, "Please come." The committee may, by Speaker's warrant, require that they be here, and they may by formal invitation ask them to come.

Mr. Stone: It is just a nope that things would solve themselves by a committee looking after its own business without going to the Speaker outside.

Mr. Watson: I do not disagree with you at all. That is why I say that I understand what we are trying to do, exactly.

Mr. Breaugh: Andy, I think what makes sense to me in accepting that second stage of the thing is that, at some point, I would think you would have to inform a witness, "If you choose not to appear of your own volition before this committee, this committee does have the right to seek a Speaker's warrant which will force you to appear."

It is just so there is not a lot of confusion out there. Someone who has never been before a committee in his life and knows nothing about the Legislature, gets a phone call from Smirle and may say: "I don't want to go. I have nothing to say to those people, or I don't want to say anything to them." At some point, before you get a warrant--which has a punitive aspect to it if he refuses to attend--it is important that a committee would get a little more formal, would do it in writing, and would notify him that: "This committee wants you here. If you don't want to come, that's fine, but the committee has the ability to get a Speaker's warrant which would compel you to come."

I think a summons is an appropriate word to apply to that. If you want to use another one, I suppose we could, but the summons declares pretty clearly that it is going to inform them of their legal obligations to attend a committee session, and that it is not really an invitation to a tea.

If you want to get more formal than that, here is the act

under which the committee might function, and these are the things that might happen to you if you do not.

Mr. Watson: I do not disagree with that concept.

Mr. Breaugh: Are you fighting the word?

Mr. Watson: The problem is the word.

Mr. Breaugh: What is another word for summons?

Mr. Treleaven: Mr. Chairman, I have an idea that Andy is reading the word "summons" as the piece of paper that a division court clerk, bailiff, serving you, hands you--a summons, and it says "summons," or they are legal documents known as summonses. I think Andy is reading that technical word "summons" into this.

I think Mr. Stone means summons to have a wider term. It can be any number of several documents, whatever the committee wishes summons to mean.

Mr. Epp: Can I comment? Is there any higher stage in the courts aside from summons, whereby they can ask you to appear?

Interjection: Yes.

Mr. Epp: Well, there you go. There are different levels. For instance, you could just ask them to appear, because I am familiar with that term, and it seems to me that--

Mr. Breaugh: In a court proceeding the summons is the first formal invitation for you to attend. If you do not want to, or you want to get your lawyer, there are other things a court can do to make you attend.

Mr. Epp: Andy, in that context, if you see it, it may help you.

Mr. Watson: Then the subpoena becomes the Speaker's warrant.

Mr. Epp: That is right.

Mr. Stone: This is staged similarly to a court in that first the witness will get a subpoena to attend. If he fails to attend, then the party convinces the judge it is necessary to have him and the judge issues a bench warrant. The bench warrant is a court's order to attend. It is similar to a Speaker's warrant, and breach of that is contempt of court, just as breach of a Speaker's warrant is contempt of the House.

Mr. Epp: In that context, you are saying the warrant takes on, in a sense, the same course as a summons does here, but a bench warrant then takes on the same one as a warrant.

Mr. Stone: The subpoena is the same as a summons. We could call it a subpoena here. The judge's bench warrant would be the Speaker's warrant, because breach of that is contempt of the court,

and breach of the Speaker's warrant is contempt of the House. That ties it in with the House, so you go back there for punishment, the same as you go to the judge.

Mr. Watson: I guess I am hung up on whether it is a verb or a noun. Is it possible--and I throw it out without too much thinking--to change that to say, "A committee of the assembly may summons the attendance," and make it a verb?

Mr. Stone: Yes, or leave it out, and say "may require the attendance," and just leave it up to what is a requirement.

Mr. Chairman: What you have done here I think is omitted the first stage. You do not have to have the first stage, which is the invitation, either the phone call or the letter confirming the phone call.

Mr. Stone: You would probably go through that, because in most cases that would be the--

Mr. Chairman: Yes, that is the normal procedure and you do not need that in the act. There is no force behind that. If that person does not consent at that stage, then the provisions of the act come into play. That is, I think, Andy's question.

I think the first stage, the invitation or the "summons," or use it as a verb, as he suggests, "by summons" or "by invitation," is not required here because you do not need any authority to do that. That is a normal procedure. But if they fail to attend, then the provisions of the act come in, including subsection 2. That is when you issue a summons.

10:40 a.m.

Mr. Stone: Yes, you should only need to speak in legislative terms to take care of where there is a problem, not the normal case.

Mr. Chairman: That is right.

Mr. Stone: Normally, you would have to know what the person's intentions are through the normal procedure, which would be to ask him to come in the normal manner. When you find there is going to be a problem, you put it on this format.

Mr. Chairman: I would think if you required that witness right from the start, to produce such papers and things as the committee considers necessary, it might be an idea right from the beginning to summons a person. Otherwise you will be delaying your committee hearings.

Mr. Breaugh: I must say I prefer the words used in the subcommittee's recommendation to what Andy has. I appreciate the concerns he has about it, but I would disagree.

To me the wording Mr. Stone has used in drafting that is clear. It uses a word which I recognize and which I think most

people would, with a connotation I think is reasonable. I would prefer not to mess around with the wording on that. I understand you are having difficulty with it, but I think it makes sense as it is, and to move off that makes the issue less clear. I would like it to be as clear as possible. So I would prefer to adhere to the recommendation of the subcommittee.

Mr. Chairman: Yes, I think it is fine.

Mr. Lane: I am a little concerned that it is quite a long step from a phone call to the summons or saying "You shall be there." I would like to think the phone call is the way it starts--and I am not too sure that is the way it should start. But the phone call would be followed up by a letter, saying, "Further to our phone call or conversation..." because with a phone call that guy has nothing to show his employer.

Clerk of the Committee: We have had several instances where witnesses have asked the clerk of the committee to supply them with a letter for their employer, and we have done that.

Mr. Lane: I would just hope that would be part of the natural course of things. The phone call would make the contact and the letter would confirm the phone call, so a guy could put something in his hand before anyone gets antagonized about it.

Clerk of the Committee: The problem with requiring that a letter go out in all instances is that a committee may be meeting on a Wednesday, Thursday and Friday, as the justice committee does, and on a Wednesday they will decide they require the attendance of a person in Ottawa. It is impossible to get a letter to Ottawa, unless you fly it in. So the telephone call usually--

Mr. Lane: It seems to me, when we are apt to have a hostile witness if we do it that way, then we go via the nice route, such as to refer to the fact that yesterday afternoon we called you on the telephone and this is to confirm the telephone call that you will be here tomorrow, or whatever. To suddenly get the phone call--and he cannot get away because he has not got a damn thing to show his employer that he has to be away--and then we summons him, he gets pretty upset about it.

Mr. Epp: I do not think it would follow that way. I think, with all due respect, what would happen is that if he had some reason to ask permission from his employer to get away, the clerk could send a telegram or something in a hurry rather than sending a letter.

Smirle is saying he just does not want to get too formal initially when just a phone call will do and when time is of the essence. But I am sure if they need something to substantiate it for purposes of making it more formal, a telegram or whatever could be used.

Clerk of the Committee: It would be an unusual thing where someone refuses to appear. We have had them say, "I have appointments," or, "I am in court tomorrow, would it be possible to come on Friday instead?" I have usually gone back to the chairman of

the committee and said: "The person isn't available on this day. Is it all right to come on Friday?" In most cases there has never been any real opposition to that.

Mr. Lane: Maybe it is an unnecessary concern, but I just do not want to antagonize the guy before we get him, that is all. I want him to come feeling good about it and help us all he can without having to force him to do something. I have always got more co-operation from people when co-operating with them rather than trying to push them.

Mr. Watson: Is it necessary for this section to give authority to the committees to hear witnesses? Is that assumed, or is that covered somewhere else?

Mr. Stone: We have have in subsection 2 the authority to require the attendance of such persons and the production of such papers. The very nature of the cabinet committee is to get information as a rule.

Mr. Chairman: The committee may summons people, production of things, papers, etc.

Mr. Stone: This would mean it would not need to be in print. The reference would apply to them all.

Mr. Chairman: Right. Is everybody happy with section 35 and proposed clause 35(a)?

Interjection: Section 35. 35(a) is the next one.

Mr. Chairman: That is what I am talking about, I want to move on.

Mr. Breaugh: If everyone is satisfied with 35, there might be some discussion on 35(a). The subcommittee yesterday, when I was sitting on it, went through this process. The other two members kind of split on it. I think we are in agreement that none of us has any objections to the wording of this clause.

Mr. Treleaven: That is right. This 35(a)--I am not going to come down one side or the other. I will go whichever way anyone wants to go on this one. Right now under the federal Constitution, no evidence given to this committee or any other can be used in subsequent criminal proceedings.

The door is open as to whether evidence given to this or any committee is used in subsequent civil proceedings. We have a choice of either keeping that door open so testimony can be subsequently used or we can close the door so no evidence of either criminal or civil will be used hereafter.

The wording here closes the door. It makes civil the same as criminal. It says to the whole world if you come and give evidence in front of this committee or any other committee, what you say will not be used subsequently in any civil or criminal proceedings.

Mr. Chairman: You are following the recommendation of the

Ontario Law Reform Commission, that the exception to this is a prosecution for perjury or for the giving of contradictory evidence. In other words, you have to tell the truth before the committee, and if there is any question of that, or if there is some conflict or contradiction in your evidence, that could be raised in a subsequent civil proceeding.

Mr. Rotenberg: Conversely, if you do not adopt clause 35(a) you have to give a person the right not to answer a question before a committee. If a witness is summoned before a committee and, let us understand, this is not a court, this is a political body no matter how they sit. Members of this Legislature tend to ask people embarrassing questions for political purposes.

Mr. Breaugh: I have never seen that happen.

Mr. Rotenberg: I have seen it. Much too often I have seen it when a witness is here under oath, you go at people and--

Mr. Epp: I find that very offensive.

Mr. Rotenberg: Therefore, Mr. Chairman, when a witness is here, summoned and under oath and asked a question which someone can be asking him for purposes which may or may not be legitimate but that can be used against a person in some other proceedings and it has nothing to do with the case before the committee, the person is not protected from that evidence being used in civil court.

The person has to have the right not to answer. Now I do not like the American fifth amendment, but I am very allergic to having the legislative process used for those kinds of purposes.

Mr. Chairman: You realize that under the charter, if a person says he is a Grit, for example, he is protected now.

Mr. Rotenberg: That is an endangered species anyway.

Mr. Treleaven: Mr. Stone and I were nodding and shaking our heads at each other at your statement on perjury. I think maybe the law on perjury--do you want to ask Mr. Stone to expand on that or clarify?

Mr. Chairman: The point I was trying to make is that you could add here, as the law reform commission added, the words, "except in a prosecution for perjury or the giving of contradictory evidence." Certainly that is implied here.

Mr. Stone: No. Such a proceeding would be criminal, and that exception is in the charter in respect of self incrimination and use of evidence in criminal proceedings.

10:50 a.m.

Mr. Chairman: I am just wondering if somebody says something in the committee, and then you go into a civil action. Under this civil action, under oath in court, a person says something that conflicted with his evidence under oath in a committee. Could he not be cross examined on that?

Mr. Treleaven: No, that is the whole purpose of it. You are taking it the same as discovery. When he says on the discovery it was a yellow car and then says it was a red car in court, the solicitor hauls out the previous testimony and says, "Did you lie then or are you lying now?" That is the whole purpose in it. That is why I am saying we either close the door or we leave the door open. We cannot go back; even if he is lying up to his eyeballs, you cannot go back. You are correct, Mr. Stone, you cannot use what he says in here.

Mr. Chairman: You are going farther than the recommendation was originally.

Mr. Treleaven: The constitution looks after the criminal part of it. We are deciding whether we are going to close the door on the civil or leave it open.

Mr. Epp: You indicated you have a strong feeling on it, and I do not have a strong feeling on it.

Mr. Rotenberg: I do.

Mr. Treleaven: You feel the door should be closed, with no testimony whatsoever used in subsequent proceedings?

Mr. Epp: That is what is recommended here. You are in support of the recommendation.

Mr. Treleaven: That is what this says.

Mr. Chairman: I assume this recommendation we have before us today does not follow the recommendation on page 127 of the Ontario Law Reform Commission report.

Mr. Stone: I submit it does, for this reason. The law reform commission report was prepared before the Charter of Rights was in effect, or even final. They assumed it was the existing law at that time. They dealt with self-incrimination in subsequent criminal proceedings.

They were making the exception in connection with that. If the subsequent criminal proceeding was a prosecution for perjury, then you could use that evidence. Now, everything having to do with the criminal aspects is entirely out of our jurisdiction. They are dealt with in the charter as it turned out in its final form.

The purpose of the use of evidence to attack the credibility of the witness in a subsequent civil action is exactly what happens. This is here so it cannot be done. That is the use made of the evidence. The lawyer gets a transcript from the committee, asks the questions of the witness in the box, gets a different answer, and goes back and says, "On this occasion you said this, is that right?" That throws doubt on his credibility.

Mr. Chairman: That is what you are going to shut out?

Mr. Stone: Yes.

Mr. Chairman: Are you saying the law reform commission was referring mainly to criminal proceedings?

Mr. Stone: Yes, exactly.

Mr. J. M. Johnson: Just a point of clarification. It says here the committee may restrict or prohibit. Does that also imply they may do the opposite?

Mr. Chairman: They may or may not.

Mr. J. M. Johnson: So they can publish documentation if they wish?

Mr. Chairman: What are you looking at?

Mr. J. M. Johnson: I was looking at 7.

Mr. Epp: It was to give some kind of substance to the fact that if a committee does not want something published, then they say they may restrict something.

Mr. Chairman: So it is not mandatory. It is up to the committee. They have the authority to do so.

Mr. Epp: They can make the decision either way.

Mr. Chairman: All right. Page 2 on the proposed amendments. We are dealing with section 45. Clause 45(7)(a) disobedience to warrant. I guess it is amending subsection 7.

Mr. Stone: If I may, these add further items to section 45. Section 45 lists at the present time 11 different things that constitute contempt of the House. The law reform commission perceived certain gaps in that and we have just taken their recommendations in clauses 7(a), 7(b) and 7(c). We have added 7(d) to theirs in order to give some remedy where there is a flagrant breach of a committee's order that certain evidence not be made public.

Mr. Chairman: On 7(a), where do we keep him?

Mr. Rotenberg: In the cafeteria.

Interjection: Nail him down in the members' dining room.

Interjections.

Mr. Breaugh: The modern-day equivalent of a dungeon.

Mr. Rotenberg: When a person, under section 45, has done some of these naughty things, is he tried before the House, or what?

Mr. Treleaven: Before the bar. Have you read the book, The Returning Officer, by my illustrious cousin from Muskoka-Parry Sound? Read it.

Mr. Chairman: Charlie Farquharson?

Mr. Treleaven: No, Gordon Aiken. He just wrote a new book. He wrote The Backbencher before. Well, this is about bringing a returning officer accused of corrupt practices in front of the bar of the federal House. It is a true story. Read it. That tells you what happens when they haul them in.

Mr. Rotenberg: What I want to know is, is there any appeal to any court from what this assembly might do?

Mr. Chairman: I would think that the injunction proceedings would still apply, would they not?

Mr. Stone: Only on the grounds of lack of jurisdiction. Jurisdiction is very wide.

Mr. Breaugh: After this one it is the one big court. No lawyers up there.

Interjections.

Mr. Chairman: Any other questions on the amendment to section 45? I always thought that the present section covered everything, but it does not, I guess. Especially 7(d) is something new. Subsection 2--

Mr. Rotenberg: I like the word "execution" in section 45. I did not know it went quite that far--subsection 45(2). In fact it goes much too far; execution is a little much, I think.

Interjections.

Mr. Chairman: Section 46, any comment? After libel?

Mr. Treleaven: It might look like housekeeping but it is more than that. Section 46 actually adds fines. Right now we either let them off with a reprimand or you stick them in jail. This permits a fine to be administered and the House to decide on what fine. Right now we have no right to fine; there is basically nothing between jailing them and letting them off.

Mr. Epp: There should be something in between.

Mr. Chairman: Section 58, any comment on that?

Mr. Stone: Section 58 sets the stage for two things. One, in following the law reform commission's report the clerk of the committee is given the authority to administer an oath for the committee; the chairman and any member is already in there. Then we get into the form of affirmation which the law reform commission wanted to recommend. They recommended that the oath be replaced by an affirmation.

11 a.m.

Mr. Chairman: Is there any comment on page 3 on the form of the oath of a witness or affirmation? It looks like you took half from what was recommended by the law reform commission and half would exist at the present time.

Mr. Stone: I am looking into it, sir. We concluded that we were not able to do away with the old until there is a change in the Criminal Code that punishes perjury. It requires an oath and through the Canada Evidence Act that permits an affirmation only under very limited circumstances to have the same force. We are pretty well stuck with that if we are going to proceed under the Criminal Code.

So we could not eliminate the oath, but what we did was take the standard oath and add what the law reform commission wanted on the end in way of warning to the witness that it is a serious offence. Then we also took the Canada Evidence Act form of affirmation which would stand in place of an oath and added the same phrase at the end of it. This affirmation would still only be authorized where the witness objected to taking an oath on conscientious grounds.

Mr. Chairman: Any questions or comments on that?

Mr. Edighoffer: I am just reading this first page over again and I guess from the experience I have had with having to decide whether to sign warrants or not, why did the subcommittee decide to leave under 35(3) the Speaker "may" rather than "shall"?

Mr. Treleaven: Good point. I asked that on Tuesday. Mr. Stone answered me and Al McLean wanted me to bring that up this morning. Al says why not make it "shall" instead of "may"? Mr. Stone?

Mr. Stone: Well, so far up to that point the matter has been entirely dealt with by the committee, entirely in the hands of the committee. It goes to the Speaker to bring in the House; that is, an official of the House, outside the committee. You cannot very well tell him he has to put on his blindfold and sign whatever you put in front of him. He needs to be able to decide it is a proper case.

First, he may want to know if there was a summons and what is the background, and I suppose anything else he wants to explore first. He may, if there is doubt, seek an outside opinion of some kind--only where he is in doubt.

It really is a way of having someone objective from outside the committee reassess that it is a proper case. I think if it is a proper case he has to do it. I suppose due to the character of the House, the nature of the institution, the Speaker might take it back into the assembly if he thought that was the wise way to handle it, if he wanted to.

Mr. Eichmanis: Mr. Stone indicated as well yesterday that it is not discretion in the sense where the Speaker can say, "I really do not think I want to sign this and I will not sign it." He does not have that kind of discretion. It is only where something has occurred, as Mr. Stone indicated, where procedures have been followed incorrectly or something is not in order that he can say, "Well, I do not think you have done it properly; go back and do it again," or something like that. He does not have absolute discretion in the matter.

Mr. Epp: Was this not the case cited of Senator Lang where he was summoned and the clerk decided that he did not want to issue the Speaker's warrant--is that not the case?--because he was a senator of Canada?

Mr. Breaugh: I think that is really the distinction that is in here, in using the word "may." What it provides for is that there may be occasions when the Speaker decides, for whatever reason, that he cannot issue the warrant.

It may be, for example, that in transmitting from the committee to the Speaker, you used the wrong name or misspelled the name. The Speaker, it seems quite logically to me, would say: "I cannot sign this. This is the wrong person. Go back to the committee and get the right name."

Mr. Edighoffer: Just looking at subsection 35(1), you are really saying that the assembly may, by warrant of the Speaker. In other words, if the majority of the assembly says there is a Speaker's warrant issued, it is issued.

Mr. Breaugh: No.

Mr. Treleaven: Mr. Chairman, we did have this yesterday. It turns on the different meanings of the word "may."

In the first one, Mr. Stone has a technical answer of legal matters and usages of the word "may." The word "may", in subsection 35(3), means "shall." It is not discretionary. It means "shall" if all the steps up that point have been done correctly.

It is not the "may" meaning as in "We may go to the races today," "It may rain today," or, "I might have lunch today." That is discretionary in my choice. This "may" is "shall," if everything up to that point is appropriate and correct.

I think that was the way Mr. Stone explained it under whatever act--I have forgotten--or whatever usage or practice.

Mr. Rotenberg: I am not a lawyer. I do not read it that way and I do not want to read it that way. Again, as you know, Mr. Chairman, I am quite allergic to this whole act.

Mr. Chairman: Yes, you have been sneezing all morning.

Mr. Rotenberg: Where a committee, for whatever reason, decides it wants to bring a person before the committee--and let's face it, committees are quite political. The Speaker is probably the least political person in this assembly.

If a committee asks the Speaker to issue a warrant, and the person to whom the warrant is being issued could make a case before the Speaker that he is being persecuted and improperly brought before the committee for no good reason, the Speaker may or may not issue the warrant.

I think the word "may" should be there and I think the Speaker should have the discretion. The lawyer may interpret "may" saying

that he must. I read "may" as being "may," and I think the Speaker, as a neutral person, should have some discretion where he feels that a person is being improperly summoned. I want the word "may" to remain.

Mr. Eichmanis: The Interpretation Act has a definition for "may." It is construed as being permissive.

Mr. Rotenberg: That is interesting.

Mr. Treleaven: Yes, I found that interesting on Tuesday. You are finding it interesting two days later.

Mr. Rotenberg: The interesting point is that the Speaker refused to issue a warrant on the basis that he felt the committee was doing something improper. It is an interesting situation where the act says "may." I would be very delighted if the Speaker would do that, if the occasion warranted.

Mr. Chairman: Mr. Breaugh moved that the recommendation of the subcommittee on an act to amend the Legislative Assembly Act be accepted.

All in favour?

Just one point along Hugh's remarks: Are you talking about 35(1), the first subsection there?

Mr. Breaugh: No, 35(3), "the Speaker may." We are all in agreement that the word "may" should be used for different reasons.

Mr. Chairman: We all agree that "may" really means "shall," then.

Mr. Breaugh: Can we have a vote on the motion?

Mr. Chairman: It has been carried. It was carried long before you got up there. Everybody nodded and winked.

Mr. Rotenberg: It should be noted that there was no vote taken, Mr. Chairman.

Mr. Chairman: All right. All in favour of Mr. Breaugh's motion, please say aye or raise your hand.

Contrary?

Motion agreed to.

Mr. Chairman: Now, are you happy?

Mr. Rotenberg: I did not say you should take a vote, Mr. Chairman. I just wanted to point out that there was no vote taken, that is all.

Mr. Chairman: All right, where were we? This matter is to be included in the appendix to the standing orders detailing

official practices of the assembly as adopted. All witnesses are the same. Some are different to others. Is that what we are saying here?

Mr. Epp: I think this is a great piece of work here. Whoever worked on that did a tremendous job.

Mr. Rotenberg: Mr. Chairman, I think we had a question about this once before. As my colleague, Mr. Treleaven, and others know, just looking at the justice committee over the past several weeks I have been sitting and listening to the city of Toronto private bill.

11:10 a.m.

We have had a number of people, city of Toronto politicians and others, come before that committee who have been making political statements, some of which I agree with, some I disagree with.

Those people were not summoned before the committee. These people came in delegations to talk about a piece of legislation. If what is said here--that all witnesses are the same, and what the interpretation is, whether a witness does or does not take an oath, he is bound by all these sections of the act. This is the interpretation that Mr. Treleaven tells me comes from the subcommittee.

Mr. Treleaven: No, it comes from the Legislative Assembly Act.

Mr. Rotenberg: I just used that as an example without trying to point any finger at the people who come before that committee, because they are the same as the people who come before so many other committee meetings I have sat in.

In effect, I think the case could be made that some of those people, if they were under oath, might say something a little differently, let me put it that way. Some of those people are making statements which may be opinions and may not be totally correct.

Frankly, Mr. Chairman, I think the people who come before us in delegations or deputations should be able to make political statements the same as we, as members of the committee, can make political statements.

I do not think there is anything in this act--and if there is, correct me--that compels a member of the Legislature to tell the truth. You can get caught, but there is nothing that compels me, either in this committee or in the House or anywhere else, to tell the truth. I can be sought out politically if I say something that is not quite correct, but I do not think there is anything in our rules--

Mr. Breaugh: This is an astounding admission.

Mr. Watson: No, this is an astounding discovery. It is not an admission, it is a discovery.

Mr. Rotenberg: Mr. Chairman, there has never been a time when I have not told the truth. There has never been a time when I have known that any of my colleagues have not told the truth. I am not saying that. What I am saying is that there is no compulsion.

When you get, "The truth, the whole truth and nothing but the truth," this does constrain people who wish to make political statements. Maybe it is because of my training in municipal politics, that when people come before a municipal council, they are not under these same constraints.

I find I am not happy with the situation where everyone sits at that end of the table in a political hearing--which I think is quite a bit different when the committee is sitting as an inquiry--on a piece of legislation; where, in effect, whether the witness is given notice or not, when someone feels that a delegation has not told the truth and that can be proven, they can be charged without any warning. I find that abhorrent in our democratic system.

Mr. Epp: Now will you tell me what you want? Do you agree with this or not?

Mr. Rotenberg: I would like to see, as I have indicated before, a situation where persons who appear before a committee--not a committee sitting as an inquiry--are exempt from this section of the act.

They are just normal people who come to talk to a committee. They are not subject to all these constraints and are not subject to the fact that they could be charged with perjury if something they said was wrong and so on. I think it is wrong in our democratic system.

Mr. Chairman: David, have you read the paragraph at the top of page 2, paragraph 4(d)? It is not mandatory that everybody who appears before a committee has to take the oath.

Mr. Rotenberg: No, but the point is, Mr. Chairman, whether they take an oath or not, they can be charged with perjury if they do not tell the truth before a committee.

Mr. Chairman: Where does it say that?

Mr. Stone: There is a provision of what constitutes contempt of the House or giving false evidence before a committee, but that is not a prosecution for perjury. That would have to be a situation where the majority of the House felt it was so serious they would have to take action.

Mr. Rotenberg: Does that only apply when a witness has taken an oath?

Mr. Stone: That part is without an oath.

Mr. Rotenberg: Without an oath. So now there is person who does not take an oath. Where the majority of the committee and a majority of the House feel that this person has given false evidence, even though he has not taken an oath and has not been told

about it, he can at some date be charged with giving false evidence before a committee. Is that correct?

Mr. Stone: They may be proceeded against by the House, only by the House.

Mr. Rotenberg: But they can be proceeded against by the House. If someone walks in, sits at that desk and makes a statement, not under oath--

Mr. Treleaven: Mr. Stone, this morning.

Mr. Rotenberg: Yes. You have come in this morning; you have not taken an oath; you are here helping us. If a majority of this committee or a majority of the House felt you had given false evidence, you could be charged, or whatever. Is that correct?

Mr. Epp: I know what you are saying but quite honestly I do not think it would follow that particular format. What would happen is that if you felt whoever that witness was was lying to the committee--he had given testimony all morning, he had given information, his opinions, or whatever--and you thought he had given false information, you would put him under oath in the afternoon and then you would ask him to repeat some of those things.

Then if you wanted to go before the bar of the House and charge him with perjury, or whatever, you would do it on the basis of the evidence he gave in the afternoon under oath. You would not do it on the basis of what he had said in the morning when he was not under oath.

Mr. Rotenberg: My point is, sir, that you could do it by the evidence--you could. The way the act is written, you could do it.

Mr. Epp: Well, you have to have some faith in your legislators.

Mr. Rotenberg: I have a lot of faith in my legislators, but I find, as I say, the way the act is written, you could take a person who wanders in off the street, sits down there, gives evidence, and if the committee does feel--maybe the committee would not do it, but we are writing law remember.

We write law, especially on--I am very strong on some of these civil liberties things and the rights of people. But if a person walks in, sits down and gives an opinion on a legislative matter and it is an outrageous opinion, then a committee, at some stage, should say because of some motives--or maybe not--that person has lied, which he may have done, and it can go to the House.

I am told that is possible under the act, without putting him under oath.

Mr. Treleaven: But, Mr. Chairman, there is one thing; you have intention or mens rea here. He has to knowingly lie, knowingly tell a falsehood. Okay? Just the fact that he exaggerates or puffs--if we were all shot for exaggeration or puffery, there would be an empty building in here. That is not so, except--

Interjection.

Mr. Treleaven: Exaggeration, or puffery, or outlandish statements are not knowingly lying.

Mr. Epp: Let us assume for a moment that someone comes before the committee and says, "There are a million people out there who are upset about this." Are you going to say, "Well, look, you go and get me those signatures of a million people" and if he comes forth with 500,000 you are going to charge him with perjury?

Mr. Rotenberg: Even if a person knowingly lies before a committee, walking in as a deputation on a legislative matter, I do not think he should be allowed to be prosecuted for perjury unless he is put under oath before that.

Mr. Treleaven: Mr. Chairman, I have to disagree with my friend here. I think if a person comes in and knowingly lies and this House believed that he knowingly lied, this House should have the mechanics, the procedures to slap his fingers, or to reprimand him, or to penalize him in some way.

Mr. Rotenberg: Not unless that person is either put under oath or that person is told--and you have to--

Mr. Chairman: Where are you making that recommendation, Dick, where you have that power here? Are you making a recommendation--

Mr. Treleaven: No, I am making a statement of opinion, the same as David.

Mr. Rotenberg: I am told that under the present act--and we are recommending it not be changed--that the House has that power. If they feel a person has knowingly lied before a committee, without oath, without warning they can take him before the bar of the House.

Mr. Chairman: That power exists at the present time.

Mr. Rotenberg: That is what I am told. Is that correct, Mr. Stone?

Mr. Chairman: What are we arguing about then?

Mr. Rotenberg: I want to change it.

Mr. Chairman: Oh.

Mr. Treleaven: He wants it watered down.

Mr. Breaugh: David wants to make it okay for people to lie.

Mr. Rotenberg: No, I am not saying that.

Mr. Breaugh: When they do.

Mr. Rotenberg: I want to say that if that is our

situation, either you put everyone under oath or to every person who comes before the committee the chairman must give some kind of warning.

See, my whole problem is the philosophy of this. This is a political body and not a judicial body, even though by the British tradition--the old British Parliament was once a court; we are not. I am very hesitant about the qualifications of any of us, as legislators, to sit in judgement on these things. Therefore I think there has to be some change in the law which protects innocent people coming before this committee.

Mr. Chairman: What is innocent about someone knowingly giving false evidence? It is nonsense.

Mr. Rotenberg: The point is when someone comes in to this committee on a legislative matter--not on a judicial hearing; not when we are sitting as a committee of inquiry, but on a legislative matter--and gives what may be opinions and what is false evidence to one is an opinion to someone else.

As I say, we heard some outrageous statements. There is a very fine line between outrageous statements and false evidence. I just feel that people who come in here voluntarily to talk about a matter are not witnesses in a court sense. We are taking an awful lot upon ourselves by saying: "Here we are. We are a court. We are these great people and we can force all those people to do things that we do not put on ourselves."

Mr. Chairman: For one thing you are talking about the assembly here.

Mr. Rotenberg: I know.

11:20 a.m.

Mr. Chairman: You are talking about the judgement and the intelligence of 125 members, or a majority of 125 members, implementing that particular section. We are not going to haul someone before the bar of the Legislature unless that false evidence was pretty serious and the person knowingly gave it and really caused some great harm or disruption. You are being naive.

Mr. Rotenberg: Let us put something in the act which says on what basis we can do it.

Mr. Chairman: No.

Mr. Eichmanis: The difficulty is that section which gives that power to the assembly has been with the assembly under that section of the act for quite some considerable time and has never been used, as far as I know. So what you are saying is that there is the potential now of it being used daily. Historically it has not been used.

Mr. Rotenberg: If it has been there and never been used we don't need it.

Mr. Treleaven: Mr. Chairman, can I underline the difference between these two documents? One is a draft statute which will become law under the Legislative Assembly Act that we already dealt with.

This other is no more than a list of suggestions for committees of the future. We have had no guidelines, no instructions, and no suggestions in the past and what we are trying to do is set up an informal list of suggestions and little pieces of knowledge for new committee people and old committee people alike of the way it will be, what it is now--basically, most of it--and a little bit of what it will be after this amendment.

Mr. Chairman: It is to be part of the standing orders. You are saying these are matters to be included in the appendix to the standing orders, is that right?

Mr. Treleaven: As an appendix. That is right. But this is not part of the standing orders. It is a list of suggestions, precedents, if you will. Do not take it any stronger than suggestions. Do not take this document as having the same weight and strength as the Legislative Assembly Act.

Mr. Chairman: No, it should be more in suggestions.

Mr. Eichmanis: That is not entirely true because some of the references here are to matters of law and those are not matters of discretion. They refer to matters of law.

For instance, as a matter of law, as the law reform commission pointed out, "all witnesses, including civil servants, etc., have the same rights and obligations irrespective of the circumstances under which they appear." That is a matter of law.

Mr. Treleaven: But it is a statement of the way things are now.

Mr. Eichmanis: Right.

Mr. Rotenberg: That is correct. And I am just saying I do not like the way things are now and I think there should be changes.

Mr. Chairman: Dave, would you, as the member for Wilson Heights, be prepared to introduce a private bill or a resolution in the Legislature eliminating clause 45(1)(6) of the Legislative Assembly Act and go and talk about it in your riding on a public platform?

Mr. Treleaven: It says you shall not do the following things and that is probably--

Mr. Chairman: The way we are held in contempt by the public today, you would stand up on your feet and say: "Let us get rid of that section. Let people knowingly lie before this House and the committees of this House." You must be kidding.

Mr. Rotenberg: No, what I am saying is that a person

should be either put under oath or given some kind of warning before anything like that can happen to them.

Mr. Lane: I think David has a point, but I do not think anybody would ever act on it. I sit on a lot of committees and we do not always get the truth; we know that. But when we have sat down to finalize the bill or whatever we are doing, we take that evidence with a grain of salt and do not really use it because it has no bearing on what we are doing. We know damned well it was not the truth but we never penalize anybody, that I know of.

So it is going to happen from time to time. We are going to have all kinds of people come and sit before us who for their own reasons are going to give us a version that is not the true version, but--

Mr. Chairman: Yes, but that is not the type of thing for which we would call them before the bar of the assembly.

Mr. Lane: We are not going to penalize them.

Mr. Rotenberg: But the point is we can.

Interjection.

Mr. Lane: That is right. We are not going to penalize them.

Mr. Chairman: Leave us some discretion. Give us some credit.

Mr. Chairman: Mr. Breaugh moves that the recommendations of the subcommittee on matters to be included in an appendix to the standing orders detailing official practices that the assembly has adopted, be adopted by the committee with two amendments, the deletion of 3(b) and 3(c).

Mr. Chairman: You did not agree with this in your subcommittee?

Interjection.

Mr. Chairman: Oh, no. Frankly, I hope that does not carry, but you heard Mr. Breaugh's motion. Any discussion? Question?

Mr. Rotenberg: Mr. Chairman, I would have to violently disagree with Mr. Breaugh.

Mr. Chairman: Oh, yes.

Mr. Rotenberg: You are taking away some more rights. If a person is sitting before the House on some kind of an inquiry and brings their lawyer--I can think of a case--and some other witness gets up and starts to say things about a person who is under some kind of charge in the House for his conduct--if we are a court, and you claim we are like a court, certainly any person who can possibly be charged as a result of a hearing, has to have the right of counsel.

Mr. Breaugh: Section 3(a) guarantees that the committee may consider the matter of cross-examination, but it simply says that the counsel does not have the automatic right to cross-examine any witness.

Mr. Chairman: That is a negative type of section, more innibiting than, shall we say--

Mr. Breaugh: That is right.

Mr. Chairman: --saying in a positive manner that that right may exist.

Mr. Breaugh: That is my thought to Mr. Treleaven's position.

Mr. Chairman: Yes. I think that sections 3(b) and (c) give that and clarify it--if these are guides, 3(b) and (c) clarifies--

Mr. Treleaven: Mr. Chairman, I did not know there were--

Interjections.

Mr. Rotenberg: I think section 3(c) is most important, Mr. Chairman. It should be there. We have said, and you have said, Mr. Chairman, that we would never take away anybody's rights and we would never do this type of thing. So, I think 3(c) is most important. When somebody is being questioned by another witness, somebody is interrogating that person--

Mr. Chairman: Particularly in view that a witness had his or her rights or reputation placed in jeopardy. I think it is a logical step.

Mr. Rotenberg: That is what I say. Mr. Breaugh has moved that section 3(c) be taken away and I am quite opposed to that.

Mr. Treleaven: Mr. Chairman, I am sorry. I was discussing political matters with Mr. Watson. I did not realize we had gone to 3(c). Holy mackerel.

Mr. Chairman: No. There is a motion.

Mr. Treleaven: Yes. What is his motion?

Mr. Chairman: To eliminate 3(b) and 3(c).

Mr. Treleaven: Absolutely opposed to it.

Mr. Chairman: Hear, hear.

Mr. Treleaven: We have discussed three situations in the subcommittee known as the steering committee. We have the situation where you have the automatic right of cross-examination of the solicitor. I think that was disposed of.

We have the other situation where there is no right of cross-examination ever. That is the position Mr. Breaugh espouses.

There is the third position, which is here, that the committee shall giveth and taketh away at its own control, at its own discretion and on its own timing. It can grant the right of cross-examination at any time to any solicitor and it can take it away at any time.

So I must say that I want to vote strongly against Mr. Breaugh's motion.

Mr. Chairman: Mr. Epp, did you have a comment?

Mr. Epp: I was under the impression that this was not going to be in here when it came before the committee, that we were just going to go with 3(a).

Mr. Chairman: Oh, (a) is not enough.

Mr. Treleaven: I think I yelped enough. Maybe they left it in yesterday.

Mr. Epp: You must have yelped in the right direction.

Interjections.

Mr. Epp: In fairness, I can understand that there was some confusion at the subcommittee level, that the drafters were not quite sure whether to go one way or the other and put it in instead of--

Mr. Breaugh: Mr. Chairman, if I may, to expedite proceedings, we did have this discussion yesterday. I think that everybody's positions are fairly clear on the matter.

It is my view that 3(a), in itself, deals with it. To simplify matters, perhaps we could split my motion and put the amendment very simply for the deletion of 3(b) and (c), have the vote and get on with this.

Mr. Chairman: Does anybody else want to comment on this?

Mr. Watson: Can I hear Mike's argument on this? You say that because the word "automatic" is in (a), (b) and (c) are not necessary? Is that what you are trying to tell us?

Mr. Breaugh: I am most anxious that we not make counsel before a committee a member of the committee.

Mr. Chairman: Take out the word "not," Mike, in (a) and I will agree to get rid of (b) and (c).

Mr. Breaugh: Thanks, George.

Interjection: As an automatic right.

Mr. Rotenberg: Mr. Chairman, I am puzzled at Mr. Breaugh's point. He and his party are the only ones who seem to always say that they are the ones in favour of civil rights and the rights of people, and so on.

When this committee sits as a court, when a person is being charged with wrongdoing by a committee, and someone else is giving testimony which indicates that the person is guilty of wrongdoing, the solicitor of the person under charge should certainly have the right to cross-examine that witness.

The committee, in effect, is sitting as judge. It is going to come out and ask whether that person was or was not guilty of wrongdoing.

When you get to 3(c), it would seem to me that I would make 3(c) much stronger; when a person's reputation or rights are being placed in jeopardy, his solicitor should have the right to cross-examine. It should not be a "may," it should be an automatic right of cross-examination.

I am content to go with this and leave it to the discretion of the committee, but I am surprised that Mr. Breaugh intended to deny the counsel of that person under charge the right of cross-examination. Good heavens, what are we--

Mr. Breaugh: You certainly should be surprised. You cannot read 3(a).

11:30 a.m.

Mr. Rotenberg: I want to make it quite implicit that when a person's reputation is in jeopardy, there is a guideline there: give his solicitor the right of cross-examination. This can be enough of a kangaroo court without taking away his right to counsel.

Mr. Epp: Oh, come on. David, you get me so bloody upset. Don't you have any confidence in your fellow legislators when you talk about kangaroo courts and everything? Is this a kangaroo court?

Damn it, we are writing the legislation and you do not think that your fellow colleagues here, whether they are on your side of the House or the other, have any common sense of knowing how to interpret the bloody stuff later on.

Mr. Rotenberg: When an outside witness comes before a committee and makes charges against another outside person, the counsel for the person being charged should have the right to cross-examine that other outside witness.

Mr. Epp: Mr. Treleaven has indicated at the subcommittee level and indicated here--when we had the Ontario law reform group here--the idea that somebody, if he wants to cross-examine, can tie the thing up for ages and ages and ages, and that was not the intention of the group.

Mr. Chairman: In that case, you do not give the person the right to cross-examine.

Mr. Rotenberg: If someone is abusing it, if you have beefs you can withdraw it, but I think it must be in there. That is all I am saying. I want (c) there.

Mr. Epp: I am going to support Mike on this. I think that, in fairness, if we omit (b) and (c), it still leaves the discretion to the committee. The committee can still act on it. What it does here, by putting in (b) and (c), is tie the hands of the committee even more.

Mr. Chairman: No, no, it does not.

Mr. Treleaven: He is slightly compromising. He will leave it the way it is.

Mr. Rotenberg: I appreciate your point. A solicitor could abuse that privilege, that is why the word--

Mr. Breaugh: The lawyers' lobby is clear, let us have the vote.

Mr. Rotenberg: I am not a lawyer.

Mr. Chairman: Gentlemen, you have all heard Mr. Breaugh's amendment. All in favour? Contrary-minded?

Motion negatived.

Mr. Watson: Thank God.

Mr. Breaugh: How did you do that? Gregory did not even appear.

Mr. Chairman: Are there any other comments on any other sections in here?

Mr. Eichmanis: Yes, if I may direct your attention to section 4(b): this is the section dealing with the affirmation. Section 4(a) gives a committee the power to examine a witness on oath or affirmation, and (b) describes the circumstances under which an affirmation can be taken.

It may be taken when the witness objects to the oath on the grounds of religious beliefs or scruples, or when the witness is incompetent to judge the meaning of the oath.

In "circumstances where the witness is incompetent to judge the meaning of the oath," what we are thinking of here are children, young adults before the age of maturity, atheists or Satanists of some kind who do not believe in God and that sort of thing.

Under those circumstances the chairman would be the one who would, in effect, be the one to decide or make some kind of determination.

Mr. Watson: Do we have to put that in? I can see a big argument over whether witnesses are incompetent or not.

Mr. Eichmanis: I have simply taken the wording from the Canada Evidence Act.

Mr. Chairman: "Competent" means if they are under age, youths.

Mr. Watson: If that is fine, I will accept it. I am wondering if you could cover yourself another way by saying "at the discretion of the committee" or something of that nature.

Mr. Treleaven: It automatically is.

Mr. Eichmanis: The idea is to give some kind of fairly concrete example under what circumstances an affirmation would be appropriate. If you just say it would be at the discretion of the committee, that is not much of a guide for a committee.

Mr. Treleaven: It actually is. The chairman would act like a judge in that case, to decide whether the child was competent to give evidence, and it is always open to a challenge of the chair. So in essence the committee is judging whether the child will be given an oath or an affirmation or, in fact, whether the child would give any evidence at all.

Mr. Rotenberg: May I ask a question? Aside from the incompetence, if a person is a witness and is asked to take an oath and he says, "No, I am going to take an affirmation for religious beliefs," that is not at the discretion of the chair. A person cannot be compelled to take an oath, can he?

Mr. Treleaven: That is correct, that is my understanding. Having dealt with a lot of Mennonites in the past, if they say, "No, it is my belief, I wish to affirm," you do not hassle them.

Mr. Rotenberg: That is clear in the courts now.

Mr. Eichmanis: Then on the following page, clause 4(d) gives the circumstances under which one would ask a witness to give evidence under oath or affirmation and then the oath to the witness and the affirmation are repeated here. This would be an appendix to the standing orders and then there would be a ready reference for the chairman to use the oath for the witness. He would not have to stumble around to the Legislative Assembly Act. It would be handy for him to use at any time.

Then section 5 is a short summary of the procedures involving the summoning or compelling the attendance of a person or for the production of documents. Clause 5(a) indicates you invite someone to appear in the first instance, and in clause (b) on a motion you summon a person, and then clause (c) you ask the Speaker to issue his warrant.

Then section 6, in-camera proceedings--

Mr. Chairman: Why do we avoid subsection 35(1) in here?

Mr. Eichmanis: That subsection deals with the assembly itself and subsections 35(2) and (3) deal with committees. It is in relation to that.

Then in section 6, in-camera proceedings, "(a) A committee

will usually conduct its proceedings in open session; however, it has complete discretion in deciding whether it wishes to conduct its proceedings in camera.

"(b) A committee may hold its proceedings in camera when, for example, it feels that the evidence might or will tend to incriminate the witness, reflect prejudicially on the reputation, character or conduct of the witness or another party, involve a sensitive, privileged, confidential or classified matter, or where for any reason the committee is of the view that the public interest would be better served by holding the hearing in camera.

"(c) A committee may also wish to hold its proceedings in camera where the matter under consideration is the subject of a pending civil or criminal trial."

Then, publication of in-camera evidence: "A committee may, on motion, restrict or prohibit the publication and circulation of evidence that may be the subject of a pending civil or criminal trial until after the civil or criminal proceedings, including possible appeals, have been concluded."

Those are directly from the law reform commission.

Mr. Rotenberg: In the light of the discussion and what is the law and what continues to be the law, it would be proper in the guidelines to committees to say that the committee chairman indicate to every witness before the committee that they are subject to the Legislative Assembly Act. If we are going to have people in this jeopardy, at least they should know they are in this jeopardy.

Mr. Eichmanis: I may add the subcommittee also decided in one of its earlier sessions that the committee would prepare what the Ontario Law Reform Commission calls an explanatory brochure, in which the rights and obligations of witnesses would be detailed.

It would be sent out at the time of the invitation or the summons as early as possible. There would also be copies of that available in the committee room, so if, for whatever reason, they did not get a copy in the mail, they would have a copy to take a look at briefly before they appeared.

That would detail that they were all subject to--

Mr. Rotenberg: This is not just for summoned people, this is for people who walk in voluntarily. Anybody who sits at that table should be handed a copy of a brief summary of the fact they are in jeopardy if they do things wrong.

Mr. Eichmanis: The staff will be working during the summer to prepare that pamphlet.

Mr. Chairman: I think in line with what Mr. Rotenberg has said, we might have a new clause (d) under subsection 1, under the heading, "All Witnesses are the Same." That says the chairman of the committee should explain to all witnesses or hand a copy of--I would like the verbal explanation because people sometimes do not get

around to reading the Legislative Assembly Act a couple of minutes before they are to appear before a committee. There should be some sort of formal warning--

Mr. Rotenberg: May I suggest, Mr. Chairman, all witnesses who appear before legislative committees should be given a brief summary of the Legislative Assembly Act in writing and the chairman should draw this to the attention of any witness before he appears before a committee. Just have something sitting at the table about their rights and obligations and before anybody comes, the chairman could say, "Are you aware of this?"

In other words, it is like a reading of their rights, but in a very short form.

Mr. Chairman: Is everybody in favour of that?

Mr. Treleaven: No. If you make it obligatory on every chairman to warn every witness of every kind who comes in the door and says one word into Hansard, then you are going to forget a great number of them. Then you are into trouble with the omissions.

Mr. Epp: That is right. Mr. Chairman, I have had limited experience here for five years and I have not really seen any great abuse. I cannot cite any abuses, I have not seen any problem with this. We have formalized a few things to make it a little easier for the chairman and for witnesses.

If we are going to become so formal that you get 20 people sitting there and then you are going to start having these people up there--like yesterday, for Pr13. I dropped in for a few minutes and some people were talking.

Sometimes somebody comes and gives them information but they have some support people. Then you call somebody up as a support person and you say, "Are you aware of all the ramifications of what you are going to say and make sure you are going to tell the truth and everything?" You are going to intimidate them to the point where they are not going to give any information and want to give information.

I mean if we had had problems up to this point, I can see that, but I agree with Dick, that once you leave somebody out, if the chairman does not fully warn everybody, if somebody comes in late and he does not warn them, you are going to be into trouble. I really do not see it.

Mr. Watson: You are using a sledgehammer to kill a fly.

Mr. Rotenberg: That is exactly my point. You have the sledgehammer. Let us tell people we have it.

Mr. Lane: I think we are going to scare an awful lot of people off if we are start talking about, "Are you aware of all the things that this says?" etc. The guy will say, "To hell with you guys, I am not going to tell you anything."

Mr. Rotenberg: Then let us relax the rules and let us not have them subject to that act.

Mr. Epp: David, in fairness, I think we are talking about two different situations here. You are talking about a hearing such as Re-Mor Investment Management Corp. where things were more formalized, where they were very cautious about the witnesses. People realized the seriousness of it.

Then you are talking about other things like the general government committee, where you are talking, for instance, about the Planning Act and you have witnesses coming in and saying, "I really think you should do something about the sign bylaw as far as so and so goes, and this is my opinion." You are treating them very differently.

Mr. Rotenberg: That is what I want to do. I want to treat them differently.

Mr. Epp: The feeling of the committee is that they should be treated differently. Given that context, I cannot see the members all of a sudden saying: "Damn it, you have made a mistake there. You have misled the committee. We are going to bring you before the bar of the House. You should be punished. You should be given a \$10,000 fine because you said you have 14 signs in front of your store and you only have 11. You have misled the committee." You are talking about two different situations.

Mr. Rotenberg: That is exactly my point. They are two different situations and they should be different. The people who come in and talk about the sign bylaw should not be subject to a charge before the bar of the House if the committee feels they have said something wrong. They should not be subject to it. That is my point. Let them be different. Let the act say they are different.

Mr. Treleaven: In fairness, David is jumping two principles here. He is sort of jumping the gap between two principles. He is back on his same investigatory as against invitee type of witness.

Mr. Rotenberg: I agree with Herb. He said they are two different kinds of hearings, and they should be.

Mr. Treleaven: But really, Herb was on the brochure subject.

Mr. Chairman: I was just wondering if there was some simple mechanical way that any witness that appears before a committee can be notified. Under the heading, "All Witnesses are the Same", and clause 1(b) says, "All witnesses are subject to the provisions of the Legislative Assembly Act."

Is there some way a witness can be informed of that fact and what that means in a simple way, either a great big sheet in front of the stand here--

Mr. Breaugh: With regard to the purpose of the exercise, in preparing a brochure which would inform people who are observers, participants and those who come before committees as to what the process is, under what act the hearing is being held, what their rights are and what their obligations are, it seems to me a reasonable way to proceed, to do it in that form.

I am a little reluctant to put an obligation on the part of every committee chairman to give notice, mostly on the grounds that I am somewhat concerned that might be abused and for the vast majority of the time in legislative hearings it does not appear to me to be essential.

I am content with the notion, as suggested by the subcommittee here, there be an appendix to the standing orders and, in line with what we have discussed previously, that this matter be put together in brochure form and be available to people who do appear before legislative committees.

Mr. Rotenberg: Would you add it as 1(d) in this?

Mr. Breaugh: I would not add it as 1(d) in an appendix in the standing orders because I want it to be a separately published brochure.

Mr. Rotenberg: I know, but it says a public brochure, giving the rights and obligations of witnesses, shall be available at the committee hearings. We have that in here.

Mr. Breaugh: I fail to see the relevance of adding that to the standing orders of the Legislative Assembly. I see them as two matters.

Mr. Chairman: This is not going to be added to the standing orders. According to Mr. Treleaven, all it is going to be is an appendix to the standing orders as a guide.

Mr. Treleaven: Yes, that was my understanding. We started off with this as a sort of handout or brochure or informal list of suggestions. It seems to me it is getting a little more formalized than I had in mind originally, than what I thought we were dealing with. I notice the heading of the last one was "Matters to be included in manual of practices." That was Tuesday. Now I notice today it is called, at the top, "Matters to be included in an appendix to the standing orders detailing official practices that the assembly has adopted." I must say it has changed in character from Tuesday until now and has been a little more formalized.

Mr. Eichmanis: If I could just explain that point, the idea here is that eventually what you would have is the standing orders in this form, and then you would have what is a manual of practices at the back of the standing orders in this loose-leaf kind of thing.

In effect, you might say that this then becomes the appendix to the standing orders, but it would be something which would be

dealing with the practices of the House and explaining how we interpret the standing orders. It would not just cover the committees but also matters in the House as well, so it would be much larger than these three pages.

Mr. Treleaven: Where did the words "official practices" come from? That scares me a little. It almost implies that this is part of the standing orders, given the same weight as the standing orders. Really that is not where I started out. I started it out as a guideline, a little less formal and official.

Clerk of the Committee: You could strike the word "official."

Mr. Chairman: Yes. You can take the word "official" out of there.

Mr. Treleaven: That would make me happier if that word "official" was out, just saying "detailing practices that the assembly has adopted". It puts it back into the realm of precedents, maybe even less than precedents.

Mr. Chairman: Any other further discussion on this? All in favour now of adopting this particular recommendation? Carried.

Mr. Epp: May I just interrupt for a moment? How do you plan on handling this, or were you planning on discussing that later on?

Mr. Chairman: Would this be a report that would now go to Legislature?

Mr. Breaugh: My suggestion would be to do it in report form to the Legislature and give people ample time to take it to the caucuses. I do not think it is of any great urgency.

Mr. Chairman: Would I file a report today or next week of this committee hearing?

Mr. Breaugh: Whenever it is ready.

Clerk of the Committee: Perhaps I could suggest something for the committee's consideration. Something we discussed in the subcommittee the other day would be that we do what the committee proposed to do earlier in the session. That was that we submit one report with all our recommendations for changes to the Legislative Assembly Act and the standing orders early in the fall.

That would give John Eichmanis and me time to do explanatory notes, which I think are necessary, outlining why we are proposing that there be certain changes to section 35 of the Legislative Assembly Act and why we feel there should be practices appended to the standing orders, including the recommendation perhaps on private bills that the House has not acted upon and the recommendations and changes to the standing orders we adopted in February last.

11:50 a.m.

Mr. Epp: So this would not go to the House then? The chairman would not introduce it in the House until the fall?

Clerk of the Committee: Until October.

Mr. Epp: I think that is a good suggestion because the reasons for these changes are as important as the changes as far as getting the concurrence of the House goes.

Clerk of the Committee: When the report did go to the House, there would be a recommendation and then an explanatory note, an explanation for each recommendation, so all members of the House would thoroughly understand why the committee was making that recommendation.

NAMING OF MEMBER

Mr. Chairman: The next item is referral by Mr. Speaker of procedures relating to the naming of a member. You all should have a copy of the legislative debates of Monday, June 7.

Thank you very much, Mr. Stone. I might also at this point thank the subcommittee for its work in submitting this report on witnesses. I congratulate you on doing a good job and reaching such a strong consensus. You all have a copy of this part of the debates under the heading, Withdrawal of Unparliamentary Language. It refers to the procedure of naming a member. How did this happen to get before us?

Mr. Treleaven: It was referred by the Speaker.

Clerk of the Committee: It was the case where the member for Oakwood (Mr. Grande) had used what the Speaker felt to be unparliamentary language in the House and the Speaker had named him. The following sitting day Mr. Nixon rose in his place to comment on withdrawal of unparliamentary language.

Mr. Treleaven: Mr. Chairman, to get the ball rolling, and maybe I am being presumptuous to other people who have put a little time on this ahead of time than I have, I would like to get us started by putting a motion on the table.

Mr. Chairman: Mr. Treleaven moves that the standing orders be amended so that the penalty of suspension for the balance of the day's sittings is the automatic penalty unless a motion is put.

Mr. Treleaven: I will give the reasoning behind this. Before I give the reasoning, can I ask the clerk or the researcher--I know what Beauchesne says on this subject--if he has Erskine May or any of the other authorities or precedents? Do they assist on the naming of a member and the penalty in particular?

Clerk of the Committee: The standing orders--

Mr. Treleaven: No, not the standing orders, the other precedents. I am going to cover the standing orders. I am asking if anything beside Beauchesne and the standing orders shed any light on the penalty.

Mr. Eichmanis: There is a small section in Erskine May that maybe I can read out on the use of disorderly or unparliamentary words. "Where any disorderly or unparliamentary words are used, whether by a member who is addressing the House or by a member who is present during a debate, the Speaker intervenes and calls upon the offending member to withdraw the words. If the member does not explain the sense in which he used the words so as to remove the objection of their being disorderly, or retract the offensive expressions and make a sufficient apology for using them, the Speaker repeats the call for explanation and informs the member that if he does not immediately respond to it, it will become the duty of the chair to take one or other of the steps which are about to be described." It goes on. Basically, he names the member and asks him to leave the House.

Mr. Treleaven: So it does not deal with any penalty. Therefore, as I now see it, there is no precedent to help us other than what is in the standing orders. As I see it right now, the Speaker was quite correct in his comments at the bottom, in the lower right-hand corner of that first page. It says in essence what the situation is right now.

In summary, there are three situations. The Speaker decides it is a minor matter and therefore the standing orders are clear. It is the balance of the day's sittings. That is the penalty. The second situation is the Speaker decides it is more serious. He then waits for a motion to be put. If none is made, including a penalty--there has to be a penalty in the motion--then he has no authority in the standing orders.

If in the second one he waits for that motion, if one is made, including a penalty, there is an automatic vote without any debate. The third situation--I jumped a little--is he decides it is more serious. He waits for the motion. If no motion is put, he has no authority. That is what the situation was with Mr. Grande. That is the situation with everything I have seen in my brief year plus. He has no authority in the standing orders. The only guideline he has of any kind is that penalty of the one-day's sittings.

Clerk of the Committee: May I just interrupt and quote briefly from parliamentary practice in British Columbia by George MacMinn. They have two different processes also covered by two standing orders, and the naming process is described as follows.

"Mr. Speaker: Mr. X, it is my duty to name you for disregarding the authority of the chair, and I now do so. It is then the clear duty of the House leader to immediately move the motion that Mr. X be suspended for X days from the service of the House. It is then equally clear that the motion is put without amendment, adjournment or debate. These proceedings are exempt from interruption by clock or points of order under the English practice." Then it goes on to describe the English practice. So there it is the duty of the House leader.

Mr. Treleaven: They have it that there must be a motion. Our standing orders have made something automatic. If the Speaker

has decided it is minor, he names him and it is one day. That is the only definite thing we have, and it is definite that if he considers it more seriously and if a motion is put, including a penalty, then there is a vote. It is totally silent if he considers it more serious, but nobody puts a motion, and that is exactly what he said on the bottom there.

He said, "Quite obviously, there is a procedure in the standing orders to cover such an incident if any members were desirous of doing so." I suggest, and that is my motion, giving an answer or a penalty if nobody stands up to take the Speaker off the hook. He considers it more serious, but if nobody wants to make a motion, at least he is taken off the hook. He has a direction and the penalty is prescribed.

Mr. Breaugh: I am just slightly concerned that is currently a matter in which the Speaker does have some latitude. It is the Speaker who will, for example, extend the matter to a point where he simply names the member and the member leaves. Previous Speakers have set precedents about people coming back in and determining somewhat, as you may recall Mr. Speaker Stokes did with the former member for High Park-Swansea, Mr. Ziemba. There was a little more serious breach than in normal circumstances, in which case he simply said he would not see the member for quite some lengthy period of time and he advised the committees of that as well.

What I am concerned about in extrapolating this a bit further is that we have a bit of a words game at work here. To invite more than what we have, that is to say, penalties and motions, there is a provision for motions to be made here if something really serious occurred. I can extrapolate a minor discretion into a major political game and I am a little reluctant to do that.

In our standing orders we have two or three things which can happen. The Speaker can retain order in some manner or dismiss the House or whatever. He can name the member, which gets the person out of there. There is precedent for saying he can do more than just name the member. If force is required there is provision for employing the Sergeant-at-Arms. It seems to me that is enough. I understand what Mr. Treleaven is trying to do with this.

12 noon

I do not want to see an invitation put for motions to come out. For example, I find the British Columbia technique rather offensive. I take it when they say the "House leader" they mean the government House leader. In any circumstances, I would not be very happy that something is taken out of the hands of the Speaker. I take it what they really mean is that all of the House leaders for the parties would meet to try to determine something or they were leaving it totally to the discretion of the government.

Clerk of the Committee: The same situation would apply in Ontario. If the Speaker said he found this to be--using the words of the standing orders--a matter of a more serious nature, it would then be, as a matter of practice established by tradition, that the House leader would stand up and say, "Mr. Speaker, I move...." That happened in the case of Mr. Crosbie in Ottawa where it was

considered to be because of traditional practice the duty of the House leader to stand up and move that motion when the Speaker had decided it was a serious offence.

As John Eichmanis and I were just talking, we think what the Speaker was trying to get to is, what is a matter of a serious nature? Also, on Mr. Nixon's question, should a member be allowed back in to the House after a member has deliberately misled the House? we have Mr. Stokes, when he was Speaker, refusing to see a member because the member would not withdraw his statement. It extended even to the point where the committee chairman refused to see the member. I think that is more of what Mr. Nixon was talking about. It is not something that should be looked at by this committee.

Mr. Eichmanis: The question is whether it is simply enough to have the member withdraw for a sitting and then come back automatically without apologizing or withdrawing his remarks. Mr. Nixon objects to the present practice whereby a member can leave for the afternoon and come back without apologizing. I take it from what it states here that he thinks that is not good enough. The member the next day should also apologize or withdraw his words. That is what I took the problem to mean here.

Mr. Treleaven: But the way the standing orders are right now, if the Speaker thinks it is a minor one, okay, that is the one day. But if no motion is put, he is left hanging with one day. That is the only penalty allowable. Mr. Nixon cannot get more than that unless he wants to put a motion. That is the way it reads now.

Mr. McLean: It would be a lot simpler if, in the case that happened here not too long ago, you had in the rules that when a member is named he must apologize or withdraw before he is allowed back in the House.

Clerk of the Committee: But a member may be named not for just using unparliamentary language.

Mr. Edighoffer: He may just refuse to sit down.

Clerk of the Committee: Yes, like Mr. Sargent.

Mr. McLean: Then he should apologize for not sitting down. It is either apologize or withdraw.

Mr. Treleaven: I would not want to see the people of my constituency unrepresented in the House because I believed somebody really lied and I believed it and I would not take it back.

Clerk of the Committee: If a person really believes another member has lied, then there are options open. He can place a substantive motion before the House and let the House leader call it and the House debate it. There are those routes open.

Mr. Chairman: I think Donald MacDonald was off the point. He was talking about his own personal situation where he had called somebody a liar, or he said if he keeps repeating a certain statement he will be considered a liar. Then apparently the then

Minister of Agriculture and Food went outside the House and admitted that what Mr. MacDonald was saying was right. That is not the point. I think what we are talking about here is what is parliamentary language.

Mr. Treleaven: May I suggest that what we are discussing is that you come back in after one day or is it something more.

Mr. Chairman: What I am trying to say is that the person who is accusing, say, a minister, of being a liar may be proved to be absolutely right, but he has not got the right to say that in the House. That is the point.

Mr. Treleaven: Right.

Mr. Chairman: As Mr. Nixon says, before he is allowed back in the House he must apologize, not for maybe uttering a truth. What he is saying is he is withdrawing an unparliamentary remark in the House.

Mr. Treleaven: It is the impropriety in the House that we are dealing with; it has nothing to do with the veracity of the statement.

Mr. Chairman: Right.

Mr. Lane: How is he going to withdraw it if he is not allowed back in the House?

Mr. Chairman: He can come back into the House and apologize.

Mr. Lane: He has to come back in the House and the Speaker has to recognize him. So if he is not allowed back in the House--

Mr. Epp: In the case of Mr. Ziemba, he came back in for that, and the Speaker would be notified that he was going to come back in to withdraw the statement.

Mr. Chairman: What was the other thing in Mr. Ziemba's situation? He just could not speak. He was not recognized by the Speaker until he apologized, was that not it?

Mr. Lane: It seems to me that gives the Speaker the kind of power he needs. If Speaker Stokes was right in doing what he did, why should we be worried about whether the Speaker has the authority to do it or not?

Clerk of the committee: There is a question involved there about whether the Speaker was right. I think that was the question the previous committee was going to look at some time.

Mr. Lane: If that is the question, all right. If that was in order, I see no problem. But if it was not in order, then I see the need for the discussion.

Mr. Breaugh: The difficulty I see with what Mr. Treleaven is proposing is that it takes a minor indiscretion and,

unfortunately, I think it creates problems. It seems to me that Mr. Speaker in this instance dealt with it properly. It was not a big deal and the Speaker clearly chose not to make it one. He could have done so if it were an important matter. Other Speakers previously have done that.

I suppose in a sense it is fairly simple to say, "When the member returns the following day, the Speaker will recognize him and ask that he withdraw the remarks." The difficulty there, as we have seen in other circumstances, is that if he firmly believes he was correct and does not choose not to withdraw the remarks, we very quickly get into a situation where there is a constituency that is in fact not represented because the member cannot speak and cannot participate.

I tend to think that we do not have a major problem there now. That is my problem with it. With every other mechanism I go to, unless it is a glaring problem where a motion is obviously appropriate, you are forcing it out of the Speaker's hands, really, and into the hands of the House. I think it has to be that kind of a gross problem where the House chooses to hear a motion, debate it and take some action. I am content with the notion that the Speaker retain the ability he now has to make those discretionary decisions.

Mr. Treleaven: Could you read my motion again, just to make sure. I thought my motion was very simple. It was that there would be an automatic, one-day suspension unless there was a motion put.

Clerk of the committee: That is the situation that presently exists in the standing orders.

Mr. Treleaven: Correct, but it does define more for the Speaker. Right now, it seems to me he is left hanging a little bit.

Mr. Chairman: Just read it once more.

Clerk of the committee: Mr. Treleaven moves that the standing orders be amended so that the penalty of suspension for the balance of the day's sittings is the automatic penalty unless a motion is put."

Mr. Chairman: Should it be, "unless a motion is put or unless the Speaker rules otherwise"?

Mr. Watson: In the case the other day, if we want to deal with that, if Mr. Nixon had not been satisfied, in other words if the remark had not been withdrawn, could he at that point have got up and made a motion?

Interjection: It is in the standing orders.

Mr. Breaugh: I know what the standing orders say, but traditionally that motion is made by the government House leader.

Mr. Treleaven: Someone could have made a motion.

Mr. Chairman: Is there a defect in standing order 20(b)?

Mr. Treleaven: Yes.

Mr. Chairman: I think your motion is basically on clause (b).

Mr. Treleaven: Yes.

Mr. Chairman: Should there not be something in there that gives the Speaker the right to request, for example, an apology or a withdrawal rather than a further suspension?

Mr. Treleaven: Mr. Chairman, really all I am trying to do is to get it on there. I think there is something lacking in standing order 20(b), and I am trying to get something in there to clarify it. I am not really beating the drum on any side. I would just like something a little more definite for the Speaker.

12:10 p.m.

Mr. Edighoffer: Just listening to it, I do not really see any change. There may be something there, but--

Mr. Breaugh: I agree with you. If the Speaker currently believes a serious offence has occurred, as Mr. Speaker Stokes demonstrated, he has the right to centre out the member and ask for the withdrawal, demand an apology. I think that is reasonably clear under the current standing orders, and there is precedent for it. That discretion is up to the Speaker. So the middle ground I think we are seeking is there. If it is the use of a major discretion, the motion may be forthcoming.

Mr. Treleaven: I do not believe the Speaker has any right, under the present standing order, to give any more than that automatic one-day suspension unless a motion is put. I believe he has no rights beyond that unless a motion is put.

Mr. Chairman: You are right. I cannot see why--

Mr. Treleaven: The conundrum came up with Mr. Nixon trying to suggest that the Speaker could put additional penalties without a motion. I would like to spell it out, that there is no additional penalty unless a motion is put.

Clerk of the committee: It says that if the Speaker feels the offence to be a minor one, then he would name the member and order him to withdraw for the balance of the day's sitting.

Mr. Treleaven: Right.

Clerk of the committee: Speaker Turner has said he felt that using the words "lying to the House" would be a serious offence.

If the Speaker then felt that was a serious offence, he would state he felt it to be a serious offence. It would then be the duty of the House leader to stand up and say, "Mr. Speaker, I move that Mr. X be suspended."

Mr. Chairman: No, not the House leader, the Speaker. If some matter appears to the Speaker to be of a more serious nature, he shall put the question--

Clerk of the committee: --on motion being made.

Mr. Chairman: I am sorry. You are right.

Clerk of the committee: The Speaker could not move a motion. It has to be a member.

Mr. Chairman: That is right.

Mr. Treleaven: Therefore, if he has said, "I consider it a more serious matter," but no motion is made, then it does not carry on further.

Mr. Chairman: That is right. It dies.

Mr. Lane: I cannot remember a motion ever being made in the last 11 years.

Mr. Treleaven: It dies, and the penalty is what?

Mr. Chairman: The member just comes back the next day and sits in the House.

Mr. Treleaven: My point is that it is a little silent on that.

Mr. Chairman: The member is just out for that day.

Mr. Treleaven: But standing order 20(b) is silent, if he says, "I consider it a more serious matter," and then is left hanging.

Mr. Chairman: Yes, there has to be a motion.

Mr. Treleaven: No. If there is no motion--

Clerk of the committee: Then he just names him for the balance of the day's sitting, I would assume.

Mr. Treleaven: He is left hanging, and that is the point I was trying to address.

Mr. Chairman: Do you not think it is up to the House leader of the aggrieved member, or the aggrieved member, to make that motion?

Mr. Treleaven: If he does not, then what?

Mr. Chairman: Then the guy is just out for the day at the very most.

Mr. Treleaven: Does it say that? I submit it does not say that. That is what my motion says, if he is left hanging, it is an automatic one-day suspension.

Mr. Chairman: It says, "He shall put the question on motion." If a motion is not made, then all he can do is to name him for the day.

Clerk of the committee: I think it would be most unusual for the government House leader--and maybe this is rather presumptuous of me--to leave the Speaker hanging in limbo after he has said he finds that to be a serious offence. I think that even if the government House leader perhaps was not there, there would be a member of the House who would probably respond.

Mr. Treleaven: You do understand, do you, Mr. Chairman, what I am trying to do? You, as a solicitor, can tear this section apart. I am saying the section is deficient in its wording. There are two situations. The Speaker finds either a major or minor offence--let me paraphrase it. If it is minor, that is the end of it, there is the penalty. If he finds it to be major, then he sits waiting. Is someone going to make a motion? If they make a motion, fine, that deals with it. But if he finds it major, and no one makes a motion, it is deficient on what the penalty is. I do not care whether it is a year in the jug or a slap on the wrist, but put something in. If he finds it major, and no one puts a motion, put it in, give him an answer.

Clerk of the committee: That might be a more appropriate spot for the use of the practices of the House, detailing it in a place like that where, when the Speaker calls for it, it is the duty of the House leader to act, or you just leave it to tradition, as we have done in the past.

Mr. Lane: I cannot ever recall a motion in my time here.

Mr. Chairman: The Speaker may find it a serious matter, but the aggrieved person or the House leader of that party may not necessarily consider it a serious matter.

I am thinking of a person, say, a Liberal member of the House who was called a liar, or a government member. If their respective House leaders or they themselves do not feel it is serious, for various reasons, the thing dies. That is right.

Clerk of the Committee: The whole matter is then left to the House to decide. The Speaker would then put the question without any amendment, debate or adjournment.

Mr. Treleaven: He cannot put it to the House unless he has a motion.

Clerk of the Committee: I am saying that if a motion is made, it would be taken out of the Speaker's hands completely at that point and left to the House to make a decision as to the seriousness of the matter. That is why it is the duty of the House leader to move--

Mr. Treleaven: Totally agreed, but I think that is not what we are discussing. What we are discussing, what Mr. Nixon brought up--I am saying there is a deficiency there.

You keep discussing it from motions put. I am not dealing with that. I am only dealing with it where it is a major matter, where the Speaker found it to be a more serious matter, and where no question or motion is put.

Mr. Chairman: Where is the rule in the standing orders that enabled Jack Stokes to not recognize Ed Ziemba?

Mr. Breaugh: Speaker Stokes gave a ruling and the House concurred with the ruling.

Mr. Chairman: I see. But it ain't necessarily in here.

Mr. Breaugh: No motion was made.

Mr. Treleaven: So he went off one way and somebody could go off in another way, but there is no direction.

Mr. Breaugh: To clarify it slightly, Mr. Speaker Stokes hardly "went off." Mr. Speaker Stokes gave a ruling with which the House concurred.

Mr. Chairman: You are saying, unequivocally and emphatically, that the words "He shall put the question on motion being made"--you are saying that in no way can he say, "I will consider a motion for such and such."

Mr. Treleaven: He can invite it, but I am dealing with what happens if there is no motion. What he would say then is, "I would rule that I consider this a serious matter and I will consider a motion to that effect from any member." So I think that if they let it lie, they let it lie.

Mr. Chairman: I think it is really a matter for the House to decide.

Mr. Treleaven: I am not certain as to why it got referred to procedural affairs.

Mr. Breaugh: I think Mr. Speaker Turner--

Mr. Treleaven: He would be wise not to ever voice his opinion. That is why I said that he decides for himself what is more serious. He gets himself on the hook if he says, "I find it more serious," so he keeps that to himself and he just waits. It is an automatic minor, unless a motion is made. Therefore, the Speaker would be very unwise to find it of a more serious nature.

Mr. Lane: So Mr. Grande did not need to get up there--

Mr. Chairman: No, he did not have to get up.

Mr. Lane: He did not have to. As I recall the Martel thing, they did not do it for quite some time. The time he and Nixon got into the thing, he did not withdraw for quite some days. There was quite a bit of tension. He sat in the House, as I recall.

Mr. Chairman: Mr. Nixon's point is that there should be some provision, when somebody has called another member a liar, that before that person can resume his seat he must at the first opportunity after resuming his seat apologize. We do not have anything in the rules that says that.

Should we amend clause 20(b) of the standing orders to read: "That such member either apologize to the aggrieved member or be suspended from the service of the House," something to that effect?

12:20 p.m.

Mr. Treleaven: No.

Mr. Chairman: Then you are not going to deal with the point raised by Mr. Nixon.

Mr. Treleaven: I am quite willing to withdraw that motion. I was simply trying to force it to the point where you either make your motion or it is an automatic one-day, and no withdrawals, no apologies, no nothing.

Mr. Chairman: What are we required to do with this? As the Speaker says, "Perhaps this is something the standing committee on procedural affairs would like to take under consideration at the earliest opportunity."

Interjection: Perhaps.

Mr. Treleaven: If you want me to withdraw that motion, I will make a motion that we report back that no changes be made. It is a motion that no changes be made to the standing orders and no recommendations be made by the committee. How is that?

Mr. Chairman: We just write the Speaker a letter that--

Mr. Edighoffer: I am just thinking back, after Mr. Stokes made that ruling here, that there was great discussion at a number of Commonwealth Parliamentary Association meetings. I remember being out in British Columbia--it is interesting you quoted British Columbia--where at that time the Speaker had had a heart attack and the Deputy Speaker was in full flight.

It seems to me, if I recall correctly, he said if he felt it was a major offence he would ask that member to withdraw every day until he finally did. Now, maybe Smirle Forsyth should check that out and just see whether that is correct or not.

Mr. Chairman: That is something to look into. Yes, I would check that out.

Mr. Edighoffer: If the Speaker felt it was a major, not a minor offence, he should have the responsibility to ask on a daily basis, when that member came back in the House, whether he would withdraw.

Mr. Lane: It would be interesting to go back to the debate in the House regarding the Martel eviction situation too. It seems to me there was debate each day or several times in that period of days about withdrawal and there was no withdrawal, yet he sat in the House and eventually he did withdraw.

It would be rather interesting to have that kind of debate before the committee. It did happen. I cannot recall the mechanics of it, but it was there.

Mr. Chairman: Gentlemen, the clerk will write to the Speaker and inform him of our deliberations this morning and our decision with respect to the relative section of the standing orders, particularly in relation to this debate in the Legislature and the point raised by Mr. Nixon. Is that all right?

Mr. Lane: Except that it is not going to help any.

Mr. Chairman: The next item on the agenda is the agency review, the merger of the Ontario Mortgage Corp. and the Ontario Land Corp. I understand OMC is dissolving and becoming part of OLC.

We have invited the Ontario Mortgage Corporation, as one of the agencies, to appear before us in September. I would assume it is agreeable that the invitation apply to the new company, the new merged corporation, namely, the Ontario Land Corp. I do not know why they would do away with the Ontario Mortgage Corp.

Mr. Watson: I guess we will find out.

Mr. Chairman: It should be both mortgage and land. I do not know. To me it is two different things.

We have also invited the Civil Service Commission. I was wondering if we want to include interest groups in this invitation, such as the Ontario Public Service Employees Union and other people, to submit briefs and to attend and make submissions if they wish. Is that agreeable to the members?

Mr. Lane: Make submissions on what?

Interjection: The Civil Service Commission.

Mr. Chairman: They are part of the civil service. Is there any particular objection to having their union also make a brief and attend these hearings?

Mr. J. M. Johnson: Not a whole bunch of people.

Mr. Chairman: No, just a spokesman. They would submit a brief. All right, we will do that then.

Has the Commission on Election Contributions and Expenses, been invited?

Interjection: Yes.

Mr. Chairman: We would invite all relevant parties, I would think, to make submissions. I am thinking of the relevant political parties, the official Progressive Conservative Party, the registered political parties.

Mr. Eichmanis: Is that agreeable?

Mr. Chairman: I think it would be interesting. We could get the Commies in here and the Libertarians. Are they registered?

Mr. Eichmanis: Yes.

Mr. Chairman: All right.

Mr. Eichmanis: I am afraid so.

Mr. Chairman: We have a letter from Mr. Snow, just for your information, regarding our report on the Toronto Area Transit Operating Authority and GO Transit. Does everybody have a copy of that? They were all sent out.

Mr. Treleaven: He said, "Forget it, guys."

Mr. Chairman: In so many words.

Mr. J. M. Johnson: He said he looked after everything.

Mr. Chairman: Yes. I have already looked after you guys. At least we have a reply which is good. We will put it into our next report.

The budget has been approved for a visit to the Legislative Assembly of British Columbia. Apparently the date now is September 20. Is that correct?

Clerk of the Committee: Yes. It is anticipated we would leave on September 20. There are meetings on September 21, 22 and 23 and we would return on September 24 to Toronto.

Mr. J. M. Johnson: Everything is finalized?

Clerk of the Committee: We have not--

Mr. J. M. Johnson: I mean as far as the travel dates and that. Can you give us a schedule?

Clerk of the Committee: Next week I will send out a notice to everyone advising you of the dates and asking you if you have any special travel arrangements, whether your spouses will be attending, and such matters as that.

Mr. Watson: What is it going to cost?

Mr. Treleaven: We had my secretary contact you. Is that right?

Clerk of the Committee: That is right.

Mr. Chairman: Are there any other comments or business?

The committee adjourned at 12:26 p.m.

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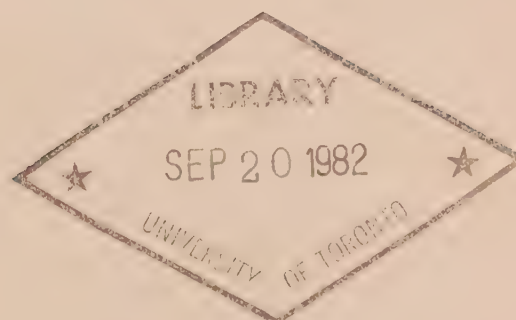
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Government
Publications

STANDING COMMITTEE ON PROCEDURAL AFFAIRS
REVIEW OF AGENCIES, BOARDS AND COMMISSIONS
WEDNESDAY, SEPTEMBER 8, 1982

Afternoon sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
McLean, A. K. (Simcoe East PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher, Legislative Library

From the Ministry of Agriculture and Food:
Bardecki, N., Director, Farm Assistance Program Branch
McCabe, B., Director, Economics Branch

Witnesses:

From the Wolf Damage Assessment Board:
Gartshore, J., Member
Preston, G., Chairman

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Wednesday, September 8, 1982

The committee met at 2:16 p.m. in committee room 2.

REVIEW OF AGENCIES, BOARDS AND COMMISSIONS

Mr. Chairman: I see a quorum. This afternoon we are dealing with the Wolf Damage Assessment Board. From the board is Mr. Grant Preston, the chairman, and Mr. John Gartshore, a member of the board. From the Ministry of Agriculture and Food we have Mr. Bernie McCabe, director of the economics branch, and Mrs. Nancy Bardecki, director of the farm assistance program branch.

Mr. Preston, do you have a presentation or some comments you would like to make regarding the function and duties of the board?

Mr. Preston: I have no written presentation, Mr. Chairman, but I can make a few opening comments.

Mr. Chairman: That will be fine, sir.

Mr. Preston: I do not know the exact year, but I would think back around 1973-1974 the Dog Licensing and Live Stock and Poultry Protection Act was amended to cover the killing of livestock by wolves or coyotes. In most of southern Ontario, the terms "wolves" and "coyotes" are used interchangeably. They are usually the same thing. Farmers typically call them brush wolves or wolves.

At that time the province had withdrawn the wolf bounty, the bounty on coyotes as well as timber wolves, and the municipalities had always, under this act, been responsible for compensating the farmer for kills or damage to livestock caused by dogs. This was one of the prime purposes of the dog tax. The moneys collected in the municipality by the dog tax were supposed to cover payments for livestock killed where the ownership of the dogs could not be traced or could not be proven, where they could not go after the owners of the dogs because they were not known.

With no wolf bounty, I understand the then minister Bill Stewart said, "Look, boys, if you are taking off the bounty on wolves then you have to come up with a program to compensate livestock owners for damages caused by wolves." So this section came into the act whereby the province reimburses the townships or the municipality in a region for damages paid to owners of livestock killed or damaged by wolves.

It would seem obvious that when the act was revised, in some municipalities the township officials--whether they be the clerks or the elected councillors advising the valuers or the valuers themselves--would say, "Look, we might as well call most of these kills wolf kills because the province is going to pay for it and the local taxpayers are not going to have to pay it out of our local taxes." There could be this tendency--

Mr. Chairman: Subterfuge.

Mr. Preston: --or possibility that we would be getting all wolf kills in the future and no dog kills. So a clause was written into the act which provides for this Wolf Damage Assessment Board.

When, in the view of the livestock commissioner, an application for a grant from a municipality for wolf damages which it has paid does not seem correct or legitimate or accurate and he has great doubts about it, if through correspondence or telephone discussions with the people in the municipality he cannot get satisfactory answers to his questions and cannot get the matter resolved, there is a provision for this board to have a hearing.

These hearings take place months after the killing or the damage, so one is not looking at the carcasses of animals. It is not a case of board members saying, "Yes, that is a dog kill" or "That is a wolf kill," but it is a case of the board members reviewing the facts as presented by the township valuer or the clerk and making a decision.

2:20 p.m.

I have been on the board five years and we have been called on three times during that time to have hearings. The owner of the livestock has not been present at those hearings. It really did not seem necessary and we did not request that he be there.

Mr. Chairman: He could appear, though, could he?

Mr. Preston: Oh, yes.

Mr. Chairman: In other words, it is a form of a quasi-judicial type of hearing.

Mr. Preston: Yes, the act mentions the hearings are held under the--

Mr. Chairman: Statutory Powers Procedure Act.

Mr. Preston: Yes. Prior to this change in the act about 1974, Natural Resources was paying it. The Wolf Damage Compensation Act was administered by Natural Resources and you had this act which came under Agriculture and the farmer sometimes was caught in the middle. This happened to me a time or two. The local valuer said: "That is not a dog kill, that is a wolf kill. You will have to get the guy down from Natural Resources." The Natural Resources man came and said: "No. In my opinion, this is a dog kill; it is not a wolf kill." So there sat the farmer. How was he going to get some compensation?

Under this act as it is now, for either wolf kills or dog kills, the farmer must be compensated by the municipality. There could be an argument that it might be other wild animals. This occasionally comes up and the township can pass a bylaw to cover that; they may or may not. But certainly the farmer is no longer caught in between, with one party saying it is one kind of kill and the other saying no, it is not.

Mr. Chairman: How can you tell the difference?

Mr. Preston: I have had enough problems with both. I have kept sheep for 26 years and we have had problems with both dogs and wolves. In 90 per cent of the attacks, the kills or the damage, it is definitely one or the other. I want to say that first. But there is a percentage that is not so positive and the valuer has to consider the circumstances. Have there been dog attacks in the neighbourhood or wolf attacks? He has to consider things.

But typically, to answer your question, if the animals, particularly sheep, which I am most familiar with, are attacked by dogs, they are chased far more. There is evidence of them having been chased and scattered over a wide area. The flock will be obviously very nervous and upset. There will probably be a number with wounds which may be anywhere on the body and most often, I would say, on the front or rear flanks, on the side of the animal, but could be anywhere.

With wolves, typically they pick out one animal, or perhaps a couple. In some cases, if the old wolf is perhaps teaching young ones to kill or to hunt, there may be several lambs killed, but typically it is one animal and almost invariably it is grabbed by the throat. Some dogs will grab by the throat too, and this is where you get into difficulty sometimes telling which kind of kill it is. With wolves, almost invariably they grab by the throat. Occasionally they miss, presumably if it is a young, inexperienced wolf. I have seen wounds on the neck or shoulder, but almost invariably it grabs by the throat

Mr. Breaugh: Could you give us some indication of what the amounts would be that would be awarded?

Mr. Preston: Do you mean at the present time? Present values for an individual animal?

Mr. Breaugh: Yes.

Mr. Preston: I am a commercial sheep flock raiser producing lambs for the commercial market. I am not in the purebred business. I have had some lambs killed this summer weighing 50 to 65 pounds and I have been awarded damages of \$50 to \$60.

Mr. Breaugh: So in order to settle a \$50-\$60 claim, we set up a board which will cost us \$340 plus expenses. Why wouldn't we just pay the claim? It would be a hell of a lot cheaper and the farmers would be happier. Why wouldn't we do that?

Mr. Gaitshore: This board doesn't have anything to do with (inaudible) --

Mr. Breaugh: No, I understand that. You have only met, you say, three times in five years?

Mr. Preston: Yes. I can tell you that when I was a board member, not the chairman, in one case we had to go down to Renfrew to settle a claim. I think it dealt with one or two calves, as I remember, probably a \$300 to \$400 value or about what it would cost the board to make the trip down.

Mr. Breaugh: The point I am trying to make is why not just pay the farmer for the damages? Why pay for the damages and then pay the same amount of money for the board to hear the claim?

Mr. Preston: I suppose because there is the feeling that if the board wasn't there, some officials would play games and it would cost more than it should.

I was going to say, and I think that Jack will have something to add here, that about the time we made that trip to Renfrew, we board members talked about that very thing; that this was costing the government quite a bit, for us in central or midwestern Ontario to drive all the way down to Renfrew. We were talking about this very thing and the chairman of the board said, "Well, furthermore, the livestock commission tells me there are a couple of cases in northern Ontario, I think up around New Liskeard, and again, they are for small amounts of money."

He said, "I do not think it makes sense for us to go up there if it can be settled otherwise, so I am going to talk to the livestock commission as well." I presume it was settled otherwise because the board was never called to go to northern Ontario. My point is that the few cases that have finally come to the board only come after considerable correspondence or telephone calls between the livestock commissioner or his office and the municipal people who have failed to resolve a disagreement or failed to provide the clear-cut information the livestock commissioner has asked for.

Mr. Breaugh: You have said that you have had only three hearings in five years. Do you know how many claims there would be out there?

Mr. Preston: Thousands. The amounts of money--

Mr. Breaugh: But out of those thousand claims it really only comes down to having three hearings. Do you feel that it is useful to continue having a Wolf Damage Assessment Board?

Mr. Preston: Yes, I do. I will tell you what our work has been. Jack will probably like to make a comment; I'm not trying to hog the floor here. After each of the three hearings, the board members agreed as we were driving back that really what we were doing that day was sort of an educational job. Sure, we had to arbitrate and say it was or it wasn't wolf damages as were claimed or the value, but hopefully we were educating, for one, the clerk. Maybe he had filed the directive that came out from the livestock branch when the change in the act came out in the round file on the floor.

The township officials were notified that in the future, valuers must state in their opinion what killed the animal. Not only that, but they must substantiate and describe the killing in such a way as to back up their decision as to whether it was killed by dogs or wolves. This wasn't always being done. In one case the valuer had been down and said, "Well, it could have been a wolf, but maybe it was a dog." I forget, but it was very vague. "It could be one or the other"--that sort of thing. We found that each time we were doing quite a bit of educational work.

One time there was a case that sort of looked as if the municipal people were passing it on to the province and having them pay for the cattle.

Mr. Breaugh: Do you have any staff of any kind who works with you when you have a hearing?

2:30 p.m.

Mr. Preston: No. I have only been the chairman for one of these hearings. We have only had one hearing since I was named chairman. I wrote up the report at home in longhand and took it in to the local agricultural representative's office and said, "Would you mind typing this out for me?" They did and I sent it in.

Mr. Breaugh: Do you think the world would notice if there was not a Wolf Damage Assessment Board?

Mr. Preston: Not very often, but I think it certainly has served a useful purpose.

Mr. Breaugh: We discussed a little earlier whether it would make more sense from the farmer's point of view to have some kind of an insurance program perhaps run by the ministry itself where you would just compensate a farmer for loss of livestock as they would on occasion for loss of a crop or some kind of natural disaster. Would that be a more efficient way to run this kind of program?

Mr. Gartshore: It might and it might not. The way it is run now is a deterrent for people to allow their dogs to run at large because they can be assessed. If you catch that dog in the act, they can be assessed for full damages. If you just had an insurance program, the dog owners would say: "That is fine. I do not care what my dog does." We might get an awful lot more dog damage.

I had one instance when I was an evaluator many years ago, and I mentioned this earlier, of a poultry man who had a big operation and had these chickens which were just about ready for market. He had a special operation for large fowl. He had a series of houses and the door of this big house was a screen door which opened in. A police dog went in on a Sunday morning, pushed the door in and got in. They had about 2,000 chickens in there and he killed three quarters of them. The ones he did not kill were all dead. They were piled six feet high in the corners.

That dog did not get out. Those chickens were worth quite a lot. I know that I got a call from the dog owner and I said: "It is too bad. Your responsibility is to keep your dog."

Now, if you just had an insurance program, the livestock industry might run into an awful lot more damage because this is a deterrent to people to allow their dogs to run. It is not as much as it should be. When we were raising sheep, every time we saw a dog we sent the dog owner copies of the act, delivered them, and said: "You read this carefully so that you will know your responsibilities in having a dog."

Dog owners are like parents; their dog can do no harm. I would be a little afraid if you just had a protection program; it might satisfy the farmer, but it may result in an awful lot more damage.

Mr. Rotenberg: Can I have a supplementary on that? Could you combine the two by having an insurance program for the payout portion to the farmers and yet have this insurance program have the power to go back against the dog owner, so that from the point of view of the livestock owner he would get paid no matter how his animal was killed. Then the Ministry of Agriculture and Food's insurance division would take over where the municipality does. They would subrogate or go back against the dog owner. Is it possible to have the best of both worlds, have the farmer paid off and yet still have the deterrent?

Mr. Gartshore: I can give you one answer there. I think your municipalities would like it in one respect, assuming the province would take the whole thing over and they would not have any more to do with it.

Mr. Rotenberg: That is a possibility.

Mr. Gartshore: Then they would have to give up their dog taxes. Most of these municipalities never touch their dog tags. That money goes for other purposes. They might not like to lose that little income they get.

Mr. Breaugh: Except that it is not exactly a great source of revenue for anybody. Most municipal councils look on that as something they would really rather not do.

When I was on council and we had people coming in for damages, the practical ramifications of trying to find the dog that actually did the damage are a little--I cannot see a council that is going to organize a dog hunt. Even if you did find a dog, how do you prove it unless you happen to be there, or in the instance you mentioned unless the dog happened to get caught? Most of us would rather not sit around and pass motions authorizing a \$2,000 expenditure for a dog hunt that is going to be unsuccessful.

I put that proposal to you as one which solves, in the first place, the farmer's problem. Mr. Rotenberg is quite right. There are means of maintaining the deterrent.

Mr. Gartshore: The only thing that would worry me would be the lack of deterrent because this is our big problem, especially with people moving out to the country from the cities and living on one or two acres. The first thing they do is get the biggest dog they can get and then they both go to work and let him run. These are our problems.

Mr. Breaugh: Do you have many complaints from farmers who would have very expensive stock? The awards made under this act are not really geared for that, but we have had some instances of people who have had livestock damaged and the livestock was an abnormally expensive animal. For example, in my community there is a man named

Taylor who has some very expensive horses. Every once in a while there is some damage to them. Certainly the awards coming under this kind of program would be nowhere near the value of the animal should that animal be destroyed.

Mr. Gartshore: When people have those valuable animals, most of them have them insured.

Mr. Breaugh: And they have security guards crawling around the haystacks.

Mr. Gartshore: They have them insured too. We had a purebred flock and we had an insurance program because ours were worth more than \$200. We covered them up to another figure.

In my municipality two dogs killed two swans. These swans were worth about \$500 apiece. There was a hell of a to-do about that.

Mr. Chairman: Mr. Epp?

Mr. Epp: I am going to pass, Mr. Chairman.

Mr. J. M. Johnson: Michael Breaugh was bringing up the fact that you should settle rather than bringing in the board in a small claim, but I would imagine if you had thousands of claims and had only three meetings in the last five years, that is a trend of what is happening.

Mr. Preston: I guess it is an indication the act is working fairly well.

Mr. J. M. Johnson: If you were called in on dozens of occasions, then it is breaking down. But if you have only been called in three times in five years, there must be some reason for not being called in. It is because they are satisfied with what is happening.

One problem I have is, do dogs run with wolves? They do not turn wild? Or can you fellows not agree on that?

Mr. Preston: All I can tell you is our experience of about eight or nine years ago when we were having quite a few wolf kills. The Natural Resources people have predator control people or people with training or some expertise in trapping. They sent their man down from Owen Sound to our place and had traps set. By golly, we got a big dog right off the bat. He did not say to me, "Look, buddy, it was not wolf kills at all, it was this dog." He said, "It may well be the dog was running with them." But I do not know.

Mr. Gartshore: There may have been evidence. They may have left bait and that dog was just a passerby. We have had that experience.

Mr. Preston: This could be.

Mr. Gartshore: We had wolf damage and they came down and set a trap. The first thing in it was our own fox terrier.

Mr. Preston: Wolves are mainly nocturnal animals and seemingly do damage mostly at dusk or just before dawn. You do not see them very often. We see what they do but we do not actually see the animals very often.

Mr. Gartshore: My daughter was working in Banff for several years. One good thing that happens out there is that the coyotes are pretty clever. What they will do if things get tough is, if they have a bitch coyote in heat, they will send her in close to town and all the available dogs take after her. She runs back and the pack jumps on them. That is one way of eliminating a lot of stray dogs.

I do not think they would run together. They do cross. What we have is mostly the crossbreeds. These are big dogs, they are about the size of and look like an Airedale. Those are not western coyotes. They are a far cry from the little coyote we have.

Mr. J. M. Johnson: You mentioned earlier that it was in 1973 that there was the first indication of wolves in most of southern Ontario.

Mr. Preston: The problem seemed to explode about that time.

Mr. J. M. Johnson: Has the wolf population continued to grow? Are there more now than three, four or five years ago?

Mr. Preston: I saw these figures today and the indications are that it sure is. I was astonished. The market value of sheep has fallen in the last two or three years and the wolf damage claims coming into the livestock commissioner or paid out by the Ministry of Agriculture and Food have jumped from \$128,000 in 1980-81 to \$185,000 in 1981-82. In local areas I think it fluctuates. We had a terrible time on our farm in 1973 and 1974; then it began to tail off, partly through the efforts of local hunters. Then it came back a little stronger last year and this year.

2:40 p.m.

Mr. J. M. Johnson: What was the damage, \$183,000?

Mr. Preston: It was \$185,000 paid out in 1981-82, according to this.

Mr. J. M. Johnson: What is the wolf bounty?

Mr. Preston: Some counties do not have any. Of course, Natural Resources says it is illegal, but some counties and townships pay it anyway. We have had our local sheepmen's bounty fund in our neighbourhood.

Mr. J. M. Johnson: It is a kind of reward, more than a bounty.

Mr. Preston: Yes.

Mr. J. M. Johnson: Mr. Chairman, I would like to suggest that if we have a committee that seems to be functioning quite well with an expense of about \$150 to \$200 a year--I believe one meeting in the last two years at about \$200 a year--and if we are looking at \$185,000 in claims, it seems fairly reasonable that whatever procedure is in place now seems to be working.

Mr. Chairman: The livestock commissioner settled all those claims?

Mr. Preston: He has okayed them. The municipal clerk must send a copy of the valuer's report to the livestock commissioner when the municipality makes its claim for a grant for these moneys. You understand that the municipality must pay promptly; I think it says within 30 days. The municipality pays the farmer who lost the livestock killed by wolves, but then either at the year-end or semi-annually, but periodically at any rate, the municipal clerk applies to the livestock commissioner for a grant to compensate for these moneys paid out.

Mr. Chairman: But there are times when the livestock commissioner, in the event that a wolf is fingered for the responsibility, might question it because of the facts in the report indicate that it may have been a dog?

Mr. Preston: Or just as often lack of facts or information in the valuer's report. It is too vague or has not enough information.

Mr. Chairman: Can you think of many instances where the commissioner overruled the report of the municipality or the finding or recommendation on the application?

Mr. Preston: He does not really tell us.

Mr. Chairman: You would not hear unless there was an appeal from his decision.

Mr. Gartshore: Yes. We just assume that if he is not agreeable, he refers it to us.

Mr. Chairman: I see, automatically.

Mr. Gartshore: Maybe he has another out; I do not know.

Mr. Preston: As far as we know, all the others have been settled.

Mr. Gartshore: That is our assumption.

Mr. Preston: As I think I indicated, in at least two of the three hearings I was at the livestock commissioner sent us copies of the correspondence that had taken place first between him and the township clerk. There was a difference of opinion and things were not getting settled. Then it was a case of this has gone on long enough, call in the assessment board and let them make a decision.

Mr. Chairman: The commissioner is at a bit of a disadvantage if he is getting an application five or six months after the fact.

Mr. Preston: I suppose we are all at a disadvantage when the court system is months or years behind events.

Mr. Charlton: In the three cases you have had in the last five years, what have been the conclusions of your hearings? Did you end up agreeing with the municipality or agreeing with the commissioner? Which way did those cases go?

Mr. Preston: Actually, I think it was 50-50. The first time, I and the other board members went to a township near Goderich and there were two claims from two different farmers that the livestock commissioner was disputing. In both claims the valuer had said it was wolves. After listening to the valuer and the township clerk and going over his report, we agreed. In both claims the valuer had said it was wolves, and after listening to the valuer and township clerk and going over his report, we agreed with them in one case and disagreed with them in another.

The next hearing was--oh, yes, at Renfrew we agreed. Once we got talking to the valuer, he just had not supplied enough information. We got talking to him and it appeared to be a clear-cut wolf kill, no disagreements at all. But this information had not been coming down to the livestock commissioner when he asked for it. In the last case we disagreed with the local valuer who said he thought it was a wolf kill. We felt quite strongly we could not see it. It was very doubtful, but you have to make a decision. When we weighed all the evidence, we definitely disagreed. So it is about 50-50.

Mr. Lane: I was interested in your earlier remarks when you were talking about discontinuation of the wolf bounty grant. This happened in 1972-73 and there was quite a panic among farmers grazing sheep at that time that the wolves were going to multiply very rapidly and the farmers would go out of business. Up north in Manitoulin Island, where I come from, that is what happened. Basically, we don't have any sheep up there any more. But maybe the dogs were as responsible as the wolves were.

In any case, I was interested in your description of the kill because having kept sheep myself--Mike Breaugh talked about that this morning--if you know what happens, you can generally tell if it is a wolf or a dog, unless it is a bunch of pups just learning to kill and then they maybe ride the sheep a little bit. Basically it is a throat kill and the killer wolf many times will simply kill for the fun of killing, to get the blood, and leave the carcass behind, whereas a dog will generally tear it apart and come back the next day and eat part of it.

The only question I have is, do you suppose the fact that the board is there tends to keep the system more honest? From listening to the debate and looking at figures, it would appear to me that it is not costing us very much to have the board, but maybe if we did

not have the board, there would be some more dishonesty or some games played along the line that may not be played now because they know there is somebody checking up on them. Would that be a fair assumption?

Mr. Preston: I would agree with you.

Mr. Gartshore: I think that is the only real purpose we have.

Mr. Lane: Yes. I thought that myself. Thank you.

Mr. Chairman: That was a good point, Mr. Lane.

Mr. McLean: In the Dog Licensing and Livestock and Poultry Protection Act, in three or four different places it states that there is liability for a fine of not more than \$50. Would you agree with that, or do you think that should be \$500? Do you think that is a deterrent when people let their dogs run at large? Fifty dollars is nothing today to go to court over. If you're caught with your dog running at large, you pay \$50.

Mr. Chairman: Burlington just raised it to \$300 and I objected because I have two dogs that run loose.

Mr. McLean: I can understand that. It probably costs you \$300 a year to feed those dogs.

Mr. Chairman: At least.

Mr. McLean: What is your opinion? Do you think that should be raised or do you think it should be left as it is? It has probably been that way since the 1800s, has it?

Mr. Preston: I don't know how long that has been, but I think most councils would be reluctant to raise it. It would be very unpopular. It might be their own dogs. Most strictly rural municipalities, like the one I live in, cannot afford a dog control officer. At one time our township looked into hiring a person who was in the business of canine control working for different municipalities. He said, "How many hamlets or villages have you got?" We listed two or three that (inaudible). He said, "There is no way you can afford hiring me on a regular basis." He would come, if called, for a specific animal. I think what councils have done instead--it seems much easier and gets less feathers ruffled--is raise the dog tax.

Mr. McLean: Yes. But if an owner is liable and charged in court, you can't charge him any more than \$50. I think it should be \$500 or more than that. I spent 15 years on municipal council, so I--

Mr. Epp: It is up to the discretion of the judge.

2:50 p.m.

Mr. McLean: That's right. I can tell you of an incident I know of where a municipality controlled dogs by hiring a guy and for every dog he took to the pound he got paid. He was even going out of his own municipality to pick up dogs.

Mr. Rotenberg: That is called private enterprise, not free but private.

Mr. Preston: The township next to the one I live in had a bylaw under which it paid a bounty for stray dogs that were shot.

Mr. Mancini: That is giving private enterprise a bad name.

Interjection: Yes. Who is going to determine whether they are stray or not?

Mr. Preston: There are not too many councils that are willing to do that. It is a pretty unpopular sort of thing.

Mr. Gartshore: I would agree with you. I think that \$50 is pretty small. I don't think that is enough. I think that hasn't been kept--

Mr. Preston: Our township has a bylaw under the act that calls for the same thing, but to my knowledge--I was on township council for 11 years--nobody was ever charged under it.

Mr. Chairman: You can't. It costs you more to charge than what you get.

Mr. Epp: I have two questions. When you file a report, who do you file it with?

Mr. Preston: That is the board filing?

Mr. Epp: Yes.

Mr. Preston: The livestock commissioner.

Mr. Epp: Do you meet with the livestock commissioner often?

Mr. Preston: No.

Mr. Epp: When did you meet last with him?

Mr. Preston: As a board, I don't know that we ever have. But we all have known him personally through our involvement in livestock organizations. I can remember being at the annual meeting of the Ontario Sheep Association and seeing Mr. McGill and saying: "I am going to have a case or two for you. There is a case coming up and you will be getting a letter about it." Then if there is something he is concerned about, he phones. In the livestock and agricultural fraternity you get to know people. When there are only three on the board, it never seems--

Mr. Gartshore: He knows all three personally.

Mr. Preston: He did not think it was necessary to call us in.

Mr. McLean: You get used to working for very little too, don't you?

Mr. Mancini: That is why you are driving a Cadillac.

Mr. Epp: Where are you from, Mr. Preston?

Mr. Preston: The south part of Grey county, Proton township in Dundalk. I am near the village of Dundalk, if that means anything.

Mr. Epp: Mr. Gartshore, where are you from?

Mr. Gartshore: I live in Ancaster, west of Hamilton.

Mr. Preston: The other board member is from Belmore near Mildmay. It is in the north corner of Huron county.

Mr. Chairman: Not from Riverdale.

Mr. Epp: You don't have any asphalt farmers on the board.

Mr. Preston: No. Do you mean from the city?

Mr. Epp: Like the Minister of Agriculture and Food (Mr. Timbrell). He is from Don Mills.

Interjections.

Mr. Epp: Or the former critic for the NDP, Mr. MacDonald, who was the critic for Agriculture and Food because he visited a farm a few years ago.

Mr. Watson: I have a couple of questions. Do you want to give an opinion as to the values--maybe not so much in the work, but the question of purebred stock comes in here. It always seems to be the most expensive animal that gets killed, or that often happens. Are the values realistic?

Mr. Preston: Jack, you have been in the purebred business. Do you know?

Mr. Gartshore: I think they are in a situation like this, because we could get into the business you are talking about if they were any higher. My feeling is if you have livestock you feel are that much more valuable, the insurance is not that great to cover them yourself. My only argument here on that business is under this act, the insurance company pays first and this compensation comes after. I think it should be reversed. I think that the first call on dog damage should be under the Dog Owners' Liability Act. For instance, if your animals are insured for, say, \$300 apiece and this will pay up to \$200, then this should pay the first \$200 and then your private insurance should pay the other \$100. Under the program the way it is now, if we get a lot of damage, we are going to push up our insurance rates. With this program, you are benefiting by our personal insurance.

Mr. Watson: But you cannot have it both ways.

Mr. Gartshore: No, I think one or the other, but I think the first call should be on this.

Mr. Watson: I do not agree.

Mr. Gartshore: Then if you want to insure your animals for more, that is your private business and you should do it, but when you insure them for a flat fee you should not exonerate the dog tax from that damage. I disagree with that under this one thing. This should cover the first \$200. If a dead animal is worth \$500, this should cover the first \$200 and then your private insurance would pay the other \$200 rather than \$500. That would keep our insurance rates within reason.

Mr. Watson: Are you acquainted with the hunter damage compensation program?

Mr. Gartshore: I am not; are you, Grant?

Mr. Preston: Slightly. I have never had any personal dealings. I have not lost any.

Mr. Watson: Is there a place for a group such as yours under that program? The old expression is that cattle always used to get struck with lightning and now they get shot. It is a matter, I guess, of who will pay. Could you see foresee arguments that, because your board is in place--can you see that sort of thing being useful in that program?

Mr. Preston: Our board being useful in that respect? I suppose it could be. I did not know that was going to be a question, but I wanted to say one thing. I would be opposed to any change in the law that takes the responsibility away from the municipal council and the dog owners. It must be impressed on dog owners that they are responsible for the actions of their animals, and council has a responsibility to--

Mr. Chairman: To compensate.

Mr. Preston: Yes, to compensate, and to create a climate in the municipality, through bylaws and their actions, to promote that.

Mr. Watson: When everybody is paying either the taxes or the dog tax, they are more aware of the dogs running wild than if the province just paid a cheque to everybody who had damage done.

Mr. Gartshore: Yes.

Mr. Watson: I would agree with that philosophy.

Mr. McLean: I have a supplementary to Andy's question. In the last few years the assessment has been taken away from the local municipalities and now it is county assessment or regional assessment offices. Before, the assessor used to be able to collect the dog tax when he went around and did the assessing. Most of the

time he used to go in and he would not talk to the parents, he would ask the little boy what the name of their dog was and he would find out then whether they had a dog or not. Today he cannot do that.

The municipalities today are having a problem collecting dog tax. You can put notices in the paper, you can tell them they are available in certain stores, but people are getting the attitude that they do not feel they should have to pay a dog tax. How does the municipality sell dog tax?

Mr. Preston: Unless they hire somebody to travel the roads and knock on doors and collect it.

Mr. McLean: Yes, I know.

Mr. Chairman: When they run loose, slap on a big fine.

Mr. McLean: The amount of money they are receiving now is becoming less because it is costing them so much to get it. I know in our municipality, with 840 dogs, it is nothing.

Mr. Chairman: They will have to have more dogs. Thank you very much, Mr. Preston and Mr. Gartshore.

Mr. Treleaven: Mr. Chairman, will we be hearing from the ministry representative?

Mr. Chairman: Yes. I was going to suggest Mr. McCabe or Mrs. Nancy Bardecki might like to comment, or members may have questions of them. Would you like to step up to the hot seat, Mr. McCabe? Any questions?

Mr. Treleaven: Yes. With regard to crop insurance, as has been mentioned by Mr. Breaugh, perhaps the young lady is familiar with crop insurance and premiums and the costs of administering this. That is what I am looking at. I will not lead anybody blindly. What I am looking at is a cost of this board of \$1,000 or maybe \$2,000 in five years. I am looking at the bureaucratic cost of administering an insurance program of any kind to replace it.

3 p.m.

Mr. Breaugh: Why not just leave the current program in place?

Mr. Treleaven: That would be fine; that is where I would like to see it.

Mr. Breaugh: Just do away with the board.

Mr. Treleaven: Do away with the board, and I understand you would like to see some insurance.

Mr. Breaugh: You could call it insurance, or the current program, whatever you want to call it.

Mr. Treleaven: Yes, but the bureaucratic cost of administering any such insurance plan, that is what I would like to get at.

Mr. Charlton: It is already being administered.

Mr. Treleaven: For animal loss, the municipalities are going to claim from the provincial government.

Mr. Breaugh: Let me try to help you out with a question. What is the cost of administering the current program? We have \$185,000 in claims. What is the cost of administering that?

Mr. McCabe: Basically this program takes up about half of the time of one professional and about quarter of the time of one clerk.

Mr. Breaugh: Which is how much in real money--\$10,000 or \$15,000?

Mr. McCabe: Something like that. It is very small because a lot of these programs are run by the same people. I would say the cost of the board is very small. Basically, the board has only one function and that is in the case where the livestock commissioner is unable to determine, or has insufficient information to determine, whether it is wolf damage or dog damage; the board makes a decision on that and that is binding on the commissioner. That is the only function of this board.

Mr. Breaugh: Maybe you could explain to the committee why you need to send three people halfway across the province to hear a \$50 claim. For example, why could they not go to a committee of the council or the local ag rep or any other local person and have it arbitrated in that manner?

Mr. McCabe: There must be a meeting of two people, two people make a quorum on this.

Mr. Breaugh: Why does there have to be?

Mr. McCabe: I think the main reason for this board is that if we do not have this board the onus would be on the livestock commissioner to make these decisions. The livestock commissioner is an employee of the province and what we are arbitrating here is whether the municipality pays or whether the province pays, and I do not think that the province would be seen to be a disinterested party. This gives an arm's-length effect to these kinds of decisions.

Mr. Breaugh: I have no problem with the Wolf Damage Assessment Board at all. The only thing I am looking at is that it never made sense to me to spend \$500 to settle a \$50 claim. I am that pragmatic that I would give the guy \$50.

Mrs. Bardecki: I think you have to look at the deterrence factor. The fact that the board is available to settle claims may act as a deterrent to false claims on the part of the municipality.

Mr. Breaugh: Except that if I have anything that I use three times in five years, it goes on my list of things I can do without.

Mrs. Bardecki: I think the fact that it met only three times in five years suggests that it is perhaps acting as a deterrent to false claims. There are very few questionable claims that come in.

Mr. Breaugh: Do you believe that the farmers of Ontario are terrified of the Wolf Damage Assessment Board and some of the municipalities are fearful of this kind of scrutiny as well and that acts as a deterrent? Is that right?

Mrs. Bardecki: I am not sure the farmers are but the municipalities, yes.

Mr. Breaugh: I find that a little difficult to believe. I will bet if we went through the municipal councils in Ontario we would have a tough time coming up with 10 per cent of them which know that there is a Wolf Damage Assessment Board, even in rural Ontario.

Mr. Treleaven: The courts are full of instances where thousands of dollars are spent in time on \$50 claims. The courts are clogged with them.

Mr. Watson: That is to keep the lawyers in business. I am aware of that and I am not too happy about that either.

Mr. Treleaven: Yes. Therefore this is hardly any precedent that there is a larger cost than the amount of the claim.

Mr. Breaugh: Are you looking for a little more case work, Dick, or what?

Mr. Treleaven: I am just speaking up for the profession.

Mr. Epp: You had better send a copy of this tape to the lawyers concerned.

Mr. J. M. Johnson: Have you any information on the average claims? Have you a figure on the largest claim that you have settled?

Mr. McCabe: I could get you some figures on the latest claims for the month of August. I did bring those with me if Mr. Chairman would like me to take a look at those.

Mr. J. M. Johnson: No, it is not necessary.

Mr. Chairman: Mr. McCabe, do you have them with you here?

Mr. McCabe: Yes, just for the month of August.

Mr. Chairman: You might as well quote from those.

Mike, on the point you made about having municipal councils replace the board, I doubt in that case that you would ever have too many dogs being fingered as the culprit. They are probably not doing the damage.

Mr. Epp: I cannot quite follow this. If this board was a deterrent, why would you only have had three cases when they are only there to decide whether it was wolf damage or dog damage?

Mr. Chairman: I think that gives a certain amount of credit--

Mr. Watson: Can I answer that? It is because there is a group of farmers on a township council like Al McLean and he is going to say, "Tell the clerk to send that in as wolf damage because the province is going to pay 100 per cent of it."

Mr. Treleaven: (Inaudible) let us build a new bridge and the next guy says, "Is there a grant?" And we decide whether we are going to build a new bridge as to the size of the grant. There is (inaudible) thinking totally in terms of grants.

Mr. Epp: Never, never.

Mr. Treleaven: Never. And I bet Al McLean thinks that way too.

Mr. McLean: Never think too often.

Mr. Chairman: Have you got that figure, Mr. McCabe?

Mr. Breaugh: You have to do something about your image in here, McLean. All these Tories are agin you.

Mr. McLean: It's all right. I can still hold my own.

Mr. Watson: We are just jealous about all the money he is collecting.

Mr. McCabe: I am sorry, Mr. Chairman, I have only payments to the municipalities and they may cover more than one claim. I do not have an average figure for the payments under this program. I could get it for the committee at a later date.

Mr. J. M. Johnson: Mr. McCabe, there is one village close to where Grant lives, the village of Conn or the hamlet of Conn. Four townships touch the boundaries, so there are four townships involved. If the accident or the kill occurred in one township and the dog was from another township, what township pays the claim?

Mr. McCabe: If the dog can be identified as to where it came from then the dog owner pays the claim.

Mr. J. M. Johnson: Okay, but the municipality in the first place pays the claim and then recovers from the owner of the dog. So the kill occurs in township A and then does township A pay the claim if the dog was found to be from township B?

Mr. McCabe: I believe the township in which the livestock owner lives pays the claim for the damages.

Mr. J. M. Johnson: And they try to recover from the owner of the dog?

Mr. McCabe: They try to recover from the owner of the dog then.

Mr. McLean: What, if any, do they recover from dog owners? Does anybody know that?

Mr. Preston: I do not want to be butting in but we had an exact case like this in our township a few years ago where a farmer living about 20 miles away had rented a farm in our township and put some sheep to pasture on it. Then he started having trouble with dogs, so it was our township council that had to pay the claims for the lambs and sheep killed. I am sure it is where the kill or the damage occurs, and the owner might live somewhere else. I remember that case very well.

3:10 p.m.

Mr. Watson: Would you comment on hunter damage and how the cases are settled because it is a similar thing as far as the farmers are concerned in collecting?

Mr. McCabe: There is not really a similar thing to the board here. This board simply settles disputes as to who pays and whether it is the municipality or the province. In the hunter damage compensation situation it is the province, so there is no need to differentiate between the two. The claim is the same.

The situation here is, if the kill is by a wolf the province pays; if the kill is by a dog the municipality pays. That is the reason for this board and that is what the board does. It simply determines whether it is a wolf kill or a dog kill in cases where the livestock commissioner was unable to determine which. Their decision is binding on the commissioner. Once they have made a decision, it is bound to go by that route.

Mr. McLean: Who pays if they cannot determine who made the kill?

Mr. McCabe: The board must come down one way or another.

Mr. Breaugh: The taxpayer pays.

Mr. Chairman: I calculate, Mr. McCabe, that the board has cost the provincial Treasurer approximately \$1,000 in the last five years. Is that correct?

Mr. McCabe: That is approximately correct.

Mr. Chairman: Any other questions?

Mr. Watson: Just as a comment, Mr. Chairman, because the board is appearing here, this came up for discussion over lunch hour and I think I made about \$3,000 for some of my constituents because one of my local townships happened to think that the limit was \$500 and it is \$1,000.

Mr. Breaugh: It has cost us more over lunch than the board has cost us in five years.

Mr. Watson: So I cost one of my poor townships a lot of money. They said there is not enough money in the dog tax thing to pay it and I said I think it says you are going to have to. So there has been a lot of good purpose accomplished.

Mr. McLean: That township will like you.

Mr. Watson: Oh, they will love me.

Mr. Chairman: I would think that most townships have collected at least \$1,000 a year in dog taxes, depending on the dog population of course. Are there any other questions from any of the members?

Mr. J. M. Johnson: We could ask Nancy if there are any new farm assistance programs coming up.

Mrs. Bardecki: We will have to wait and see.

Mr. Watson: Can I tell you a story about the wolves that were killing the sheep and they were having a meeting in the community to see what they could do about it? One of the ladies that was present wanted to preserve all the wolves and had the answer. She said, "Listen, all we have to do is trap these wolves and sterilize them and let them go and the problem will eliminate itself." And the farmer stood up and said, "Lady, you just do not appreciate the problem at all. The wolves are killing our sheep, not raping them."

Mr. Chairman: On that note, thank you very much, Mr. McCabe. Gentlemen, I think it might be a good idea if we take a few minutes this afternoon to consider some recommendations. I do not think we would want Hansard. I think we can do this in camera.

Mr. J. M. Johnson: Just before the members leave, I received an amending notice which says that we meet at 10 o'clock tomorrow morning. I understood it was 8:45.

Mr. Chairman: Where did that come from?

Mr. J. M. Johnson: I do not know. It was on my desk. It is dated September 8. Is it 8:45 tomorrow morning?

Mr. Eichmanis: Yes, for the art gallery.

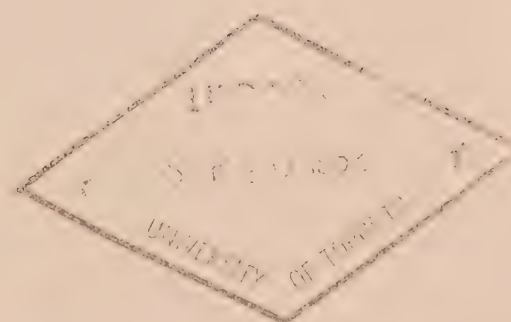
Mr. Chairman: The note was that you were to assemble for transportation from the legislative building at 8:45 a.m. to be at the art gallery around 9 a.m. and then back here at 11 a.m. No. I would ignore that one. That is just a normal starting time of 10. The schedule of hearings is the one that counts.

Mr. Charlton: An amending notice was sent out as a result of the cancellation of yesterday.

The committee adjourned at 3:16 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS
REVIEW OF AGENCIES, BOARDS AND COMMISSIONS
THURSDAY, SEPTEMBER 9, 1982
Morning sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
McLean, A. K. (Simcoe East PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher, Legislative Library

Witnesses:

From the Art Gallery of Ontario:
Hopcraft, T., Controller
Koerner, M., President
Walford, N., Corporate Secretary
Withrow, W., Director

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, September 9, 1982

The committee met at 11:10 a.m. in committee room 2.

ART GALLERY OF ONTARIO

Mr. Chairman: We have the Art Gallery of Ontario before our committee this morning. Present are Michael Koerner, president of the gallery; William Withrow, director; Norman Walford, corporate secretary; and Tom Hopcraft, who is a controller.

Gentlemen, I regret that I was not able to tour the gallery this morning with the other members of the committee, but I will say I have had the pleasure of being there on a number of occasions. I understand that the members who attended were very impressed and you probably softened them up substantially so that they will not even ask a question. They tell me that anybody who was not there is not allowed to ask a question, so it should be a short meeting.

In any event, I was just wondering, Mr. Withrow or Mr. Koerner, if you have a written presentation you would like to make, or if you would just like to make some oral remarks of an introductory or background nature which would, I am sure, generate some questions from committee members.

Mr. Withrow: Mr. Chairman, I would appreciate if we could open with a few statements, particularly from our president, Mr. Koerner.

Mr. Koerner: I am Michael Koerner. This is Tim Hopcraft, not Tom Hopcraft.

Mr. Chairman: That is what it says here. That is my mistake.

Mr. Koerner: He is the controller of the gallery. You know Mr. Withrow and I think you know Mr. Walford.

Like you, Mr. Kerr, I was not able to join the tour of the gallery, but I think we both know the gallery. I am delighted that the committee had an opportunity to visit and to see the various aspects of the institution and thereby understand its breadth and understand its quality.

I would like to supplement some of the visual impressions that you have had of the Art Gallery of Ontario by quoting from Hilton Kramer, who was the chief arts critic of the New York Times. When reviewing the 1981 special exhibitions of North American museums, he spoke of the three best exhibitions of that year. Two of those were in Canada and both were at the Art Gallery of Ontario. They were our van Gogh show and the Turner show, and the only other exhibit which ranked in the same league was the fine arts show of Pissarro in Boston.

I cite this as an example of recognition which the Art Gallery of Ontario gets beyond its borders and which puts it into an international league, and our exhibition program has been of that sort of quality. Beyond giving the public an opportunity to see the permanent art works which you saw this morning at the Art Gallery of Ontario, our exhibits program has brought to the attention of our public important artists. The way in which this has been done has brought international note to the art gallery.

Speaking of the art gallery in economic terms, there are some obvious things one can say, such as it is a tourist attraction and is obviously sought out by many visitors to Toronto. I think we have noticed that your government advertises the Art Gallery of Ontario as an important cultural asset of this province. It brings credit to the city of Toronto, to the province and to Canada actually.

In sort of dollar and crass monetary terms, let me just cite and suggest the following. The replacement value, for instance, of the buildings of the Art Gallery of Ontario in today's market might be upwards of \$125 million. That is not a hard figure because we do not think about that very hard but it gives you an order of magnitude. The collection, and we are asked that question, is insured at \$200 million, but I do not believe that necessarily is the replacement value of the collection. It is sort of trite to say it is priceless but that is just what it is. It could not be replaced. But if one had to seek a replacement, I would think \$250 million upwards is the order of magnitude you should bear in mind.

I would also like to stress that the collection is virtually 100 per cent the result of private source money or gifts from the private sector. The collection has been put together over many years through private donations. The buildings also owe a portion to private donations but a very large percentage of the original cost of the building, particularly the more recent buildings, has been through aid from government.

I think the public recognizes what I have suggested to you in economic terms. Let me cite some statistics that we think are very important. The Art Gallery of Ontario membership today is in excess of 30,000. It has never been at a higher figure and we take considerable pride in the backing that implies in this community. Our corporate membership is now in excess of 250 corporations, which means these corporations support us annually on a monetary basis--there is a minimum cost to that--and they use the facilities of the gallery in various ways. I will come back to that later.

We have very faithful volunteer workers. There is a regular group of 300 people, mostly women, who have done Trojan work for the gallery. Beyond that, we have another group of volunteer workers, the gallery volunteers as we call them. There are in excess of 500 of those. So there are some 800 people who work at the gallery on a part-time volunteer basis and who are very important to the success of the gallery.

We have a group of corporate sponsors whom we have developed over the last years who help us with exhibits, underwrite the cost of exhibits, underwrite the events, and this is really what I wanted to come back to because it has occurred only in the last three days.

when the Toronto Dominion Bank, for instance, chose the Art Gallery of Ontario for a reception which they held on Labour Day, Monday, to honour visitors to the World Bank-International Monetary Fund meetings which, as you know, are being conducted in Toronto this week.

That event was organized and catered by the Art Gallery of Ontario. It is the largest event we have ever done and we did it with our staff and people who were hired. We expect to make a good profit and the Toronto Dominion Bank in a sense is helping the gallery because that profit would have gone to a hotel or club or some public institution.

The bank chose to use us, not only because they wanted the profit that could be earned to go to the gallery, but beyond that they recognize that, by bringing international people into the gallery, this will bring credit to Toronto, and the Third World people will see that this is not a Third World city, it is a major international city.

Finally, I would like to speak about the private donors this gallery has had over the years. I do not know what they number, I do not think we keep track of that, but the works of art that you saw this morning, as I have said earlier, are entirely the result of their gifts. You have received many submissions today, and I am sure you have had a chance to go over them. We will answer questions on finances and budget in any detail that you want to give to us. We have our chief financial officer, chief administrative officer and our director here. Among the four of us, I am sure we can field those questions.

I would just like to highlight the problems that AGO feels most acutely and that is inflation and its impact. Our costs are very prone to those problems. We are very labour-intensive in what we do. Some of our fixed costs that we cannot alter, like energy, have risen at a rate significantly in excess of inflation.

Your government supplies us with somewhere between 75 and 80 per cent of our total budget. You know your figures have not kept up with inflation and this has created a problem. Since one of our critical mandates is that we do not accumulate a deficit, we have had to find ways of coping with that. We have had to cut back on certain services that we were loath to do but it is an economic necessity. We have worked very hard to become more efficient and more productive.

We have been trying to raise those revenues that we have discretion over by applying user paying, and we have been trying to recognize the services we provide in terms of their perceived fair market value and we try to charge accordingly. For instance, admission costs are going to go up fairly shortly in a significant way and we think that is fair and appropriate.

We are also trying to be innovative in how we raise funds towards the operating costs of the gallery, namely, corporate sponsorship and other ways. I think we have been innovative and we have worked hard to develop new resources, but finally we come back to you to plead our case because you are our main source of support and I hope we can convince you of our needs.

The last thing I would like to touch on is our trustees, how these are selected and what they do. I think you know from your documentation we have 27 trustees. Five are elected from what we call our College of Founders, 10 are elected from membership, two are appointed by the council of Metropolitan Toronto, 10 are appointed by the Lieutenant Governor in Council. They come from a broad geographical Ontario community base; they are not by any means all from Toronto. They represent a very broad variety of publics.

Just to raise a few in no particular order, we have had or have artists on our board of trustees, architects, businessmen, engineers, doctors, housewives, professional women. They bring a variety of talents to our deliberations and we have been very fortunately served in the sense that these people put a great deal of time, effort and thought, not just into the work as trustees but into committee work and various other ways of supporting us.

Collectively, what we are really concerned with are three basic things. As trustees, we keep a watchful eye on management and make sure that the management of the gallery stays within the broad policy guidelines that I think you are well aware of. Second, we try to bring a fiscal responsibility to the gallery. We do not have deficits. Historically, this has been the case at the art gallery. We may be looking at deficits in the future, but we will have to cope with those when we get closer to that future.

11:20 a.m.

Finally, the third thing is that the trustees are very seriously concerned, in the broadest sense possible, about the integrity of the institution. We recognize our responsibilities to the government, to the people of Ontario, to our members, our supporters and our employees.

Having said all of that, I think Mr. Withrow would like to speak about some of the professional aspects of the gallery and then we are prepared to answer any question as best we can.

Mr. Withrow: Mr. Chairman, I feel I have been talking to this committee for about an hour and a half and I will be very brief. I am going to change my original plan a little and talk about something I did not touch on in the tour, if I may, and that is exhibitions because of their great importance, as Mr. Koerner has already indicated.

We talked as we went about the building this morning of our various audiences. I think there was a justifiable stress on the fact that we are essentially an educational institution, offering many different kinds of services related to education in the visual arts, but of necessity, because we were trying to cover a big building in a short time, we did not touch upon one of the main functions of the gallery which, along with collecting, is terribly important, and that is exhibitions.

By way of covering that, I would like to talk about some exhibitions that are coming up. I must admit to being very preoccupied with them because I guess, as director, I am in charge of the big shows particularly and it is the big ones I am going to talk about.

The one that is coming up immediately, and which the committee saw being installed, is an exhibition of Group of Seven material, Mr. Varley's work, but the big show of the fall season is the show of William Blake. It will be the most comprehensive show perhaps ever mounted and certainly the first time in this hemisphere that his art has been seriously looked at. It will have 250 works of art, including water colours, prints and books, because, while you may know him more as a poet and book illustrator, he was also a very important, though eccentric, artist.

Major loans will be coming from the Pierpont Morgan Library in New York, the National Gallery of Art in Washington, the private collection of Paul Mellon, the Tate Gallery and, of course, the British Museum. It is being organized by the Art Gallery of Ontario in co-operation with the Yale Centre for British Art and British Studies. It will go to two places only in North America, the AGO in Toronto and the Yale Centre in New Haven.

I thought you might be interested in the budget. Budgeting is a very ulcerous business these days because of the inflation factor. Shipping--I guess that is tied in with the energy business that Mr. Koerner mentioned--is one of our biggest costs. Looking down the list here of shipping, insurance, customs, exhibition assembly--that is picking up the pieces all over the world and bringing them to central places and getting them on airplanes--matting, framing, research, photography, the poster, communications, packing and crating, the catalogue and so on, the largest figure in this list, which comes to a total sum of \$91,500, is for shipping at \$20,000. Insurance is the next largest at \$15,000.

I would just like to touch on that problem which some of you may know is being worked out at this time among the provinces and the federal government to indemnify loan exhibitions, as most developed countries in the world have for years. In the United States, no insurance was spent on the Tutankhamen exhibition until it passed into Canada on its way to the Art Gallery of Ontario. Then we had to take out a commercial insurance policy which knocked out the budget. The American centres had that all looked after by the government saying, "If anything happens, we will pay." It is just as simple as that. We are hoping that some co-operative thing, which is peculiarly Canadian, will be worked out with the provincial and federal governments on this to reduce the costs of these shows.

We are very proud to announce we have corporate sponsorship. One of the big Canadian companies has come through with \$30,000. You will note that is only one third of the cost of the show but we are going to levy a surcharge. We hope we will make up the gap from the attendance fee. The surcharge will be \$1.50 and we hope the gap of \$60,000 will be made up in that way.

It is a different kind of exhibition. It is Canadian and contemporary, of the now world-famous Canadian artist, Alex Colville, who as you may know is a sort of surrealist-realist artist--

Mr. Chairman: A Maritimer.

Mr. Withrow: A Maritimer. He has a big market for his work in Germany, Britain and the United States, in that order. Canada is last, but he has a big following in Canada. I am not saying he has not. The core of the exhibition will be a representative selection of some 35 paintings. He paints one or two a year; he is not prolific. They are very detailed. It will be the biggest--again, the superlatives which I had to apologize for using on the tour this morning--most important show ever mounted of this artist's work. It is organized by us and its tour includes important museums in Berlin and Vienna, as well as Montreal, Vancouver and Toronto. The budget for that is \$150,000 and the shipping is a very large factor in that bill.

I am sorry I have not been able to crack this one yet. I was hoping by this morning to be able to announce which company is going to sponsor it, but they are thinking about it and we have every indication they are going to come across with \$25,000 for it. These are difficult times.

Mr. Chairman: I think the Bank of Nova Scotia should be involved in that one.

Mr. Withrow: It is a good suggestion, Mr. Chairman.

Mr. Chairman: He probably has his overdraft there like the rest of us.

Mr. Withrow: There is one that I am personally very excited about. Years ago, when I first joined the gallery we had an exhibition which was very popular. It was of 17th century Dutch paintings called The Golden Age of Dutch Painting. After all these years, we are going to have another one. This is Dutch Painting of the Golden Age from the Royal Picture Gallery, which is known as the Mauritshuis in The Hague. This is the creme de la creme of 17th century Dutch painting, an exhibition of 40 selected works. It includes Rembrandt, Frans Hals, Jacob van Ruisdael, Jan Steen, and Jan Vermeer. It is organized by the Mauritshuis and has been on display at the National Gallery of Art in Washington. It will go to the Museum of Fine Arts in Boston, to Chicago and Los Angeles and Toronto in October 1983.

It is a very expensive exhibition. The cost will be \$385,000. The insurance on that will be \$45,000, just for the premium, and that is only a fraction of what we would be paying if we were responsible for bringing it across the ocean. Somewhat like the Tutankhamen exhibition, we are attaching ourselves to the end of an American tour which was highly subsidized by the two governments because it was an official government to government thing, just as the Tutankhamen was.

11:30 a.m.

It apparently celebrates the beginning of trade relations between America and Holland 200 years ago. We are fortunate in that we could never afford to initiate it and bring it to Canadian shores on our own. As I say, we are attaching ourselves. We will have our

own version of the catalogue. We will again be surcharging. In fact, we are thinking of ticketing this show because there will be such large crowds. We are approaching sponsors and working on it very hard. We are asking for \$50,000 toward the \$385,000 budget. Again, with the \$1.50 surcharge, we are anticipating making \$225,000.

Finally, because I know time is a problem, I would like to touch upon an exhibition which, for another reason, I am excited about because it is on the extension side of our operation. It is very difficult to get exciting European works into our program of loan exhibitions for smaller centres in the province.

We learned that Schumacher, Ontario, is named after an American, Frederick W. Schumacher, who made his money, at least partly, here. He is dead but his family lives in the United States and has a collection which is in the Columbus Gallery of Fine Arts. I negotiated with the director there and he is stripping one of his galleries of 22 old master paintings from this collection so that it can go to Timmins, Thunder Bay and Windsor in the fall of 1983. That exhibition will cost just under \$30,000 and we got a \$25,000 sponsorship from the Schumacher Foundation from the United States.

The small exhibition centre in Timmins, which is actually located in South Porcupine just outside of Timmins, and the people in Thunder Bay and Windsor are very excited about this exhibition because it includes some very well-known names: Jordaens, Gainsborough, Romney, Ruisdael, Ingres, Turner and so on.

I would like to stress that although we are an educational institution, we are also in show-biz and it is for educational purposes but also it attracts support for our gallery. It attracts members and attention generally to this province.

I guess we are now open for questions.

Mr. Chairman: Thank you so much, Mr. Withrow.

Mr. Lane: I would like to express appreciation, as one of those who was there this morning, for the tour. It was very well organized, we covered a great deal of ground and learned a great many things in a very short period of time.

The one thing that impressed me when I was there and with your figures is the number of volunteer workers you have. I have often thought that governments per se tend to legislate or regulate volunteers out of existence in many cases. Obviously that is not the case with you. Is that still going or are you slipping in that field? Do you have more volunteers now than you had two years ago?

Mr. Withrow: Yes, we have more, but I would not say it is an embarrassment of riches in volunteers. It is causing a problem in the orientation and training of volunteers because there are so many people who want to work just a few hours a month. Therefore, we sometimes have to say no unless they can make a commitment for several hours a week. Again, it is the large exhibitions that have created this interest in volunteerism at the gallery because the volunteers have such a marvelous time.

It is a social time for them but it is also an exciting time to learn because they are given lectures by our staff, they are given previews of the shows and then they help us out with ticket-taking and catalogue sales and that sort of thing for these big exhibitions. I think that is one of the reasons we have such a broad-based response to our volunteer program.

Mr. Lane: I assume that apart from saving you some money, as opposed to hiring people to do those jobs, they also make you some money because they look after some of the food concessions and so forth.

Mr. Withrow: The food is a professional operation but they are in charge of certain of our fund-raising activities. The reproduction shop, for instance, and the jewellery shop are entirely volunteer efforts and they turn a tidy profit. I do not think they could if they had to pay staff, perhaps not to the same extent anyway.

Mr. Lane: The other thing I was curious about is somebody mentioned that you never have a deficit. One way or another you work it out so you do not have a deficit. You are talking about very expensive exhibitions and shows. I assume that you have to guarantee a certain amount of money to get those.

Mr. Withrow: Yes, we do.

Mr. Lane: Assuming that it does not turn out as well as you expected, or whatever, for whatever reason, and the money does not flow, you still have to pay that amount and you must have a deficit there. Suppose that was to happen, how do you cover that?

Mr. Withrow: So far we have been fortunate. I guess there is some flex in that some make money and some lose money. Although we keep books separately on each exhibition obviously, you can rob Peter to pay Paul to end out the year. We would simply have to go out on a private fund-raising operation if we ran into serious difficulty.

Mr. Lane: You make money on them all, I hope, but assuming that you have to pay a given amount of money to get the exhibition, then you have to do a lot of things that one would not think about, I am sure, to take care of all of the necessities around there.

Mr. Withrow: Yes.

Mr. Lane: How do you get that into an expense account, so to speak, so that you know what it costs you?

Mr. Withrow: As I say, this is one of the most ulcerous sides of the business because the exhibition costs vary tremendously from year to year and from show to show and there is always, as you point out, that risk factor, but we try to look as scientifically as possible at the anticipated revenue as against the anticipated expenditures. I do not know how else to answer that really.

We strive very hard to attach to the exhibition certain fund-raising activities. Our corporate members, for instance, are encouraged to have tours of the show on the evenings that we are closed to the public and pay us for that privilege of bringing their customers, their staff, their clients, whatever, to see the show. If we do catering for that event as well as the tour, that can be quite lucrative and helps look after that shortfall.

Mr. Lane: So you have to have a good imagination as to how to cover off those expenses.

Mr. Withrow: Yes.

Mr. Chairman: Just following along on that, Bill, for example, on the Tut exhibition, according to our information, your income was around \$4.6 million. The main part of that money goes to the Egyptian Organization of Antiquities, after which the gallery or--

Mr. Withrow: Before which, Mr. Chairman.

Mr. Chairman: --before which the gallery deducts its expenses. I am a little surprised that the gallery does not get any more than its expenses. What is the criterion or the definition of expenses here? Certainly you are not charging a form of rent only. What do you get out of it?

Mr. Withrow: No. There was a percentage that the gallery certainly managed to tuck away. Can I ask the controller to answer that in detail?

Mr. Hopcraft: First of all, Tut was a special character because we had a contract with an outside party to actually take the profit. Therefore, it was carefully cost-accounted and there were labour and overhead charges made against that, after which the remaining profit went to the Egyptian Organization of Antiquities.

11:40 a.m.

With our regular in-house gallery exhibition, where there is no third party involved as far as profit goes; basically we have an exhibition committee which does a budget. They look at ticketing, catalogue sales and just about all the extra additional staff if it has extended hours, etc. It is controlled that way. This is like an additional side cost-accounting to the exhibition. So there are two parts really to any exhibit budget. There are the direct and then the overhead costs. Against any third-party deal, the overhead costs are assigned directly against the exhibition. With the in-house ones, they are really not.

Mr. Chairman: I see.

Mr. Koerner: Mr. Chairman, may I just amplify on that a little bit? We struggled over that one mightily because there were a lot of dollars floating through the gallery at the time. As I think you have heard, there was a memorandum of understanding with the Egyptian government whereby no museum in North America that had the

Tut show could make a profit under the guise of this memorandum. We discussed this with our auditors, Clarkson Gordon. The government of Egypt has the right to audit our books on that show. The concept was that any reasonable expense the Art Gallery of Ontario had could be charged against that.

We did not make a profit, but there is no question we had certain benefits. Just to cite a specific case, I believe some carpeting was replaced totally at the cost of Tut. I do not know what the value of that is any more. It is probably not even important. But that was carpeting that the AGO would have had to replace, say, in 1984 or 1985. It got replaced with good material at the expense of the Tut show because we had thousands of people lining up and wearing out the facilities at the gallery.

The real benefit of the Tut show came to the AGO in at least two ways which I think are worthy of mention. One is, our membership skyrocketed. I cannot cite the figure. Maybe somebody remembers the figure.

Mr. Withrow: We were at 19,000 and it went to well over 39,000, but we knew it would drop back. As a matter of fact, we thought it would drop back to 25,000, but it has held at 30,000, which we are very proud of.

Mr. Koerner: That is a significant monetary benefit. It gets people interested in the gallery, besides just the dollars and cents.

The second benefit was that there were a lot of commercial sales of jewellery, scarves, chocolates and all kinds of curiosities. Some of that meant profits were generated for the volunteers of our committees and these benefit the gallery. So there was a benefit, but in terms of a profit, no, there was not a profit.

Mr. Chairman: Parking fees.

Mr. Koerner: Parking fees? I wish we had a parking lot, sir. If you can provide us with a parking lot, we will charge fees. That is one of our critical problems.

Mr. Chairman: Bill, on the same line, when you are talking about, for example, having the Blake exhibit or the Colville exhibit, would you make the same type of arrangement in respect to those exhibits?

Mr. Withrow: No. We initiated the Blake exhibition. We went into partnership with another museum, which, just in passing, is a museum with very high scholarly standards and attitudes, and so it is really just an absolute break-even sort of thing that we are aiming for. When we take an exhibition like the Mauritshuis, because we were not in on the original tour of that Dutch show, we are having to put up a fee, as Mr. Lane intimated. It is \$200,000, which is just a straight up-front fee and we have to make that back. But that is unusual. The Tut arrangement was, of course, extraordinarily unusual. It is normally a give and take, you scratch my back and I will scratch yours type of arrangement among the world museum community, particularly in Canada, of course. We try to not charge each other, but to come out on top.

Mr. Chairman: Do you have the fee, insurance and shipping on top of that?

Mr. Withrow: Yes.

Mr. Chairman: I see. So you have to estimate your costs.

Mr. Withrow: Yes. One of the anomalous situations is that when we want greater public access to such shows, we extend our hours into the evening and weekends and that, of course, ups our labour costs tremendously, particularly in security. So we have to calculate whether we are going to bring in enough revenue from the added hours to counteract the additional costs.

Mr. McLean: I have a couple of questions on the notes to the financial statements. Is there still an \$11 million debenture? Over the next two or three years, what are your plans for your financial position? How do you plan on changing it to reduce that and to change the revenues around so the province is not as liable as it has been in the past? What is your plan for the next three or five years?

Mr. Hopcraft: Those debentures came about during the building program and, as I understand it, the province is retiring those on our behalf. That was all part and parcel of the mechanism to give the Art Gallery of Ontario the building grant when they built the project.

Mr. McLean: Is that over and above the \$4 million to \$5 million it gets every year?

Mr. Hopcraft: Yes.

Mr. Withrow: Mr. McLean, we received it at the same time that the Royal Ontario Museum received its building grant of \$12.7 million and it was done through this debenture mechanism. But it was an outright grant to us to do a certain expansion job and it had nothing to do with the operating subsidy.

Mr. McLean: You mentioned that the province is not keeping up with the cost of inflation in its grants. How do you foresee alternative ways of raising funds?

Mr. Withrow: We have been working very hard at that. One area that I would like to have our chief administrator, Mr. Walford, address is internal efficiency.

Mr. Walford: I think it is fair to say that there are two approaches we are taking to solving that problem, one of which has certain limitations on it because there is only so much you can do internally. On the internal side we hope to be able to increase our efficiency in the way we spend the money we have by streamlining procedures, reorganizing our internal inventories by looking for more cost-effective methods of doing things.

We have put out many of our major contracts to tender to see whether or not we can get a better deal, get better service for the money we expend. We have reorganized structures. For example, I cited this morning the amalgamation of two branches which resulted in a saving of labour and an increased strength. We have projects like that going on. We are trying to mechanize wherever possible to increase the elasticity of our work force as it is.

On the other side of the balance sheet, we are trying to increase our revenues wherever we can. That comes in the form of admission fees or in increased charges for use of the facilities or educational service fees that we charge out to various places.

We are also trying very hard to look at all of the retailing potential we have, the business potential apart from those other fee areas, and maximize on those. From the point of view of the five outlets that are at the gallery now, we are currently studying those to improve their efficiency, although I must say with the volunteer operations, where you have basically a zero labour component, you cannot do much better than get a return of sometimes between 40 and 50 per cent on those. But in the outlets that the gallery operates we are looking at both expanding the business base and increasing the efficiency so we can realize a higher return.

Mr. McLean: Do you foresee any layoffs in the future and using more volunteer workers?

Mr. Walford: I suppose that will depend to some extent on our success on the two programs I have cited. As I said, we are looking for every opportunity to increase our internal efficiency but we will get to a point on the curve where we can no longer squeeze anything out.

If it becomes a problem where our inflationary increases far exceed our base operating funds, for us, because of our labour intensity, it means a reduction in work force, there is no doubt about it. However, if we can help ourselves through increasing our revenue basis, then we will certainly use that kind of money to offset to the extent possible.

11:50 a.m.

There are strings attached, for example, to volunteer money. They like traditionally to raise money for art purchases because to them it is their contribution to the institution, their hours and their profits. So we are not entirely free to use whatever money we have to offset operating costs.

Mr. McLean: Do your board members volunteer or do they get paid for meetings?

Mr. Koerner: No trustee gets any kind of pay.

Mr. McLean: They are all volunteers.

Mr. Koerner: That is right.

Mr. Chairman: Do you mean coming from Thunder Bay? They must get expenses.

Mr. Koerner: We pay some travel expenses. That is all I am aware of. Is that correct, Bill?

Mr. Withrow: Some years ago, when it became a matter of perhaps not having people from places like Thunder Bay and Ottawa, I asked permission from the then minister, I think it was Mr. Welch, and he gave us permission to pay just the air fare and one night at a hotel. I think two people are taking advantage of that at the present time.

Mr. Chairman: There are probably a couple of meals thrown in there, too, Bill.

Mr. Koerner: My understanding is that the trustees have been very reasonable. Some trustees travel into town and to the best of my knowledge submit no expense accounts. They do that as their extra contribution to the institution.

Mr. Breaugh: I have a couple of areas that I would like to talk to you about. What is your relationship with other galleries in in other Ontario centres? Is there any formal relationship there?

Mr. Withrow: Yes, there is. We are one of the founding members of an organization called the Ontario Association of Art Galleries and we are an active member to this day. It has a long history and has become a much more professional operation with a secretariat and so on.

There is also a sort of network of understanding among museums, particularly the larger ones, that operate through that and regardless of it, because it is a co-operative lending of material and expertise back and forth.

Mr. Breaugh: Are there any kind of contractual links among the galleries, or is this all done as exhibitions are prepared and individual deals struck?

Mr. Withrow: Any contractual arrangements have to do with perhaps a series of lectures or a particular event such as an exhibition.

Mr. Breaugh: But they are centred around a particular event or exhibition as opposed to a contractual obligation to supply certain numbers of things during the course of the year.

Mr. Withrow: Yes.

Mr. Breaugh: Do you have any formal relationship with any of the educational institutions which use the gallery extensively?

Mr. Withrow: It is really more understood than contractual. Our territorial staff sometimes lecture part-time at Toronto and York universities, or will go out for particular lectures once or twice a year. The only contract I can think of is

with the Ontario College of Art, which is the fine arts college that sits partly on our property next door to us. Their students have privileges to use our facilities which are contractual.

Mr. Breaugh: How do you work that out? Is it just for visiting?

Mr. Withrow: The chief of administration has been dealing with this recently so it is right on the tip of his tongue.

Mr. Walford: It is a 60-year-old agreement which stems from the time the college was established and built partly on gallery property. At that time it was recognized in the correspondence between the two institutions because of their like endeavours that it would be to the advantage of both to have an interchange program. That has gone on over about a 50-year or 60-year base.

In the 1950s it was renegotiated and certain privileges were accorded to the students, such as the use of the library, free admission and a reduced rate admission along with some other privileges that were exchanged between the institutions. That is the only sort of formal contract we have at present.

Mr. Breaugh: One of the areas most of us were trying to grapple with yesterday when we were out getting briefed on this was the finances of it all, which is often difficult with something like an art gallery. I guess the model that pops into mind is what would any other agency of the government do.

Of course, if you were one ministry or one department of the municipal government, one of the first things your administrators would have in their mind would be a chargeback scheme so that every time anybody set foot on your property you would have somebody there monitoring that and there would be a nickel charged or a dollar charged or whatever, but there would be some attempt. I think the basic premise is a pretty reasonable one, that when another agency uses your facility or your staff, there is an accounting process at work and some attempt is made to assess realistically those costs against another source.

In your case, if you did some work for another gallery or another centre, there would be a chargeback scheme agreed upon and you would allocate funding in that way. In your instance, you would be looking at the University of Toronto or the Toronto board or outlying boards of education in going into contractual agreements on a chargeback basis. Is there much of a future in that for you to explore or to attempt to get?

Mr. Withrow: Any time it has been suggested it is resisted, and the argument is that it is all for the cause. That is the idealistic argument. The other argument, if the crunch comes, is much tougher, and that is that we are supported by the Ontario government and that it is our duty, therefore, to help any educational, not-for-profit organization in Ontario and that we will be helped some day on the same basis. They really resist that.

What you have raised, though, is the subject of cost

accounting as a way of controlling costs. We have certainly been doing that internally, that is, charging departments internally for services. If you push that to the extreme, you are so busy policing those things and getting involved in a paper war between departments that you are not getting on with the job.

Mr. Walford: If I might add to that, Mr. Chairman, looking back at the College of Art agreement, there was originally a fee levied as part of that contract of some \$25,000 a year, which was to be paid through the college from the province to us. It was later decided that was really a silly way of handling the money, because it was going from the government to one institution and to another, and there was probably a cost in handling it through those.

It was decided in the mid-1960s, when we were all under the Ministry of Colleges and Universities, that we would simply have that amount added to our grant and that it would be subsumed into our grant. The arrangement between the two institutions remained, but it was paid for directly by the government. So that happened as part of that, and that was certainly, I think, partly because of the government's reaction.

On the other fronts, we do make charges back to centres on our extension program. We do not intend them to pay for the full cost of any of the programs, because they simply cannot afford to pay, and we therefore would be watering down the effect of our extension program. We do levy a fee that is then subsidized by our budget as part of our extension mandate.

When we had to restrict our operations a couple of years ago, we went to some further user fees and tried to expand the categories to other educational institutions. The reply was that many of our facilities have been built in conjunction with other facilities and there is a reciprocal arrangement, so again you get into the argument of who is getting the best benefit. It is very difficult to determine that on something like a library, for example. It is not possible. Our curators could not work if they did not have access to the University of Toronto libraries, and there is some argument on the other side that we have a very specialized library. It tends not to be a very productive argument.

Mr. Breaugh: One of the difficulties I think we are all having with this is that there has been a lot of argument, but I'm not sure there was a lot of thought behind it. There has not been a real sorting out of the role of something like an art gallery or a museum. We get into this argument. I see two sides of it. If you went into a strict accounting process, each one nickelling the other for the appropriate amount of money, you would probably wind up defeating everybody. Yet in the absence of some kind of concrete, long-term, financial commitment, with a clear sorting out of the roles of the museum and the art gallery and anybody else around town, it does not seem as if there is much of an option there.

Is there much of a push to try to establish in Ontario that the provincial government ought to take the operational costs, as an example of something to which they can make a long-term commitment to fund properly, and then everybody would get stabilized? I sense that a lot of our museums and galleries are living kind of hand to

mouth and are trying a variety of different ways to beg, trying to get into a little bit of show business and a little bit of entertainment, anything that will turn a buck. But the long-term prospects of that are a little on the shaky side.

12 noon

Mr. Withrow: I am very sympathetic to what you are saying. As one of the operators, as against the grant givers, I find it difficult to generalize, but one specific problem comes to mind that we have been working on just recently.

We are deeply involved in the museology course which the school of graduate studies at the University of Toronto offers with the Royal Ontario Museum and us. When they send their students to us for an apprenticeship of six months, we feel we should be paid, because there is a lot of staff time involved, and we are trying to work that out. But there does not seem to be much money for that, and they feel we should do it. Of course we want to do it, because it is very much in our long-range interests as an art museum to see young people enter the profession through this professional channel.

York University is starting a somewhat different kind of museological training and it has approached us, and again the subject comes up.

Mr. Breaugh: There is one thing that concerns me. I must confess I don't know a great many people who are operating galleries, but, of those I do, they seem to be in a kind of constant hotch potch figuring out the rules of any given game about getting grant money.

One of the keenest people I know spends a good deal of her time figuring out who has grants going now and how to wangle a little bit here and a little bit there. There is a constant flow of Wintario money coming in; so how does she play the game to get that money? She runs a tremendously successful gallery in Oshawa, but it seems to me such a shame that someone so talented spends the bulk of her time figuring out the different games that are going. Why don't we just give her a licence to have a crap game in the back alley? At least there would be a regular and consistent flow of cash going through there.

Is there any hope we will get to a point where that financial responsibility and financial relationship is ultimately sorted out? Are there people or any of the ministries that are making proposals in that area?

Mr. Withrow: I think the staff of the Ministry of Citizenship and Culture is concerned about this. They certainly try to make it as easy for us to play the game of grantsmanship as they can. The federal government is another story, and for the small amount we get from them, compared to what we get from the province, I sometimes wonder whether it is worth it all.

Mr. Breaugh: I don't see a whole lot of hope that we are ever going to resolve this. I guess what is unfair is that, for example, we reviewed Ontario Place last year. It is very easy to

look at a new concept like that, which has a lot of things going for it and does not have problems of older buildings or a limited market to deal with or things like that. That seems fairly straightforward. Things seem to have worked out there.

But when you get into other museums and galleries, there are a lot of problems and there does not seem to be a lot of hope that things are going to get resolved. It seems kind of bleak, because my personal estimation of the potential of working a chargeback scheme or something along that line is that it seems to be a little on the slim side.

Mr. Withrow: The problem really comes down to--you used the word "entertainment"--and I see a danger, which I guess if everyone is very sensitive to it can be looked after, that if we go too far into entertainment and commercialism, then we cease to be what we are supposed to be and we simply lose our way.

Mr. Breaugh: My basic problem, for example, is even simple things. You talked about a \$1.50 surcharge. That seems like a reasonable amount of money, and I suppose I could mount an argument that there are a lot of people who would like to go to a gala social at the art gallery who would probably pay \$40 or \$50 to go to a similar sort of gala in some other setting. But the basic purpose of a public art gallery is to give the public at large access, so that the poorest little starving student out there who wants to go and view an exhibit can do so. That is why it is public and not private.

I am caught in a bit of a dilemma there. I don't like the idea of a surcharge, but it certainly seems to me that if you are going to bring major exhibitions into town, you cannot do that and lose money. We have got an obligation to make that at least self-supporting, if not a profit-making enterprise.

Mr. Withrow: Mr. Chairman, I would remind the committee that we have a evening once a week from 5 p.m. until 10 p.m. which is absolutely free. But the big show is excluded.

Mr. Breaugh: Yes.

Mr. Withrow: Lots of shows are not, of course. Two or three shows a year have this extra charge.

Mr. Chairman: Do you have a general admission fee?

Mr. Withrow: Yes, we do.

Mr. Chairman: What is that?

Mr. Withrow: At present it is \$2.

Mr. Chairman: What about a show such as the Blake exhibit?

Mr. Withrow: It would be \$1.50 on top.

Mr. Chairman: But then you would have that free evening for that type of show as well?

Mr. Withrow: No. They could come in and see the rest of the gallery for free.

Mr. McLean: Do a lot of people come in on that free night? Is it used to advantage for the people?

Mr. Withrow: I have to be frank about this. A disappointing number come in, unless there is an event. If we have a film or a lecture, a tour or something, then the attendance is good, and if it is well advertised, which costs money. But if it is just open, there is a small crowd.

Mr. McLean: Why do you have a free night?

Mr. Withrow: The minister asked us to have a free night. We believe in the idea of a free night.

Mr. Chairman: Mr. McLean does, too. His inflections were not too good.

Mr. Breaugh: Well-known Socialist.

Mr. Chairman: It always pays somewhere along the line.

Mr. Epp: You get what you pay for.

Interjection: You do not get the profits, understandably.

Mr. Chairman: Senior citizens. Do you recognize a senior citizen card?

Mr. Withrow: The Ontario senior citizen who carries that card gets in free.

Mr. Chairman: At all times?

Mr. Withrow: At all times.

Mr. Chairman: Well, that is--

Mr. Withrow: Special shows excluded, again.

Mr. Chairman: You and your special shows.

Mr. Withrow: Yes. And we have student rates, very modest ones.

Mr. McLean: Are you going to increase that?

Mr. Withrow: Yes. They are all coming up, but I have been in touch with our sister institutions and I hope we will not be too far out of line. We may be leading for a few months.

Mr. Chairman: I suppose it would be difficult to have a free evening for a special exhibit just from the point of view of attendance now.

Mr. Withrow: Yes. One of the reasons that we have to have

tickets and restrict the number of people--and we are not trying to restrict them by making the charges excessive--is that you have to control the crowds. First of all, the people themselves would not enjoy the event if they could not see and they were jostling each other, which would happen; the other thing is that there is the danger to the works of art.

Mr. Chairman: Right.

Mr. Withrow: To put it bluntly, the fire marshal would close us down if we did not restrict the number. We have certain numbers that are allowed in certain spaces, and that is on file from the Toronto fire marshal, who is very strict about that.

Mr. Epp: Which three, four or five museums outside of Canada would you relate to most easily in size, function and so forth? Which are comparable museums outside of Canada that you think--

Mr. Chairman: In other words, which one is number two?

Mr. Withrow: Thank you, Mr. Kerr. I do a lot of thinking about this, because I am asked the question in various ways all the time. It is really difficult, because museums, particularly in North America, have grown up with entirely different histories. They have been started invariably by private benefaction; they centre on one or two families who put the institution together and house a collection that they maybe put together in a very personal way, and so they take off in different directions.

But if you are talking just about size and budget, there are two museums in Baltimore, one of which compares very directly to us in size of staff and budget: the Baltimore Art Museum, not the Walker. There is one in Cincinnati that is somewhat the same. The big four or five, or course, are up a whole notch; that is, the Metropolitan, Washington, Boston, Chicago and the two museums together that are under the same management in San Francisco. Then you drop down to this other list.

12:10 p.m.

Mr. Epp: That is the second level that you see in Toronto--

Mr. Withrow: Yes. And we are not always in it when we talk about endowments, but we are in it in terms of performance.

Mr. Epp: That is the important rating.

Mr. Withrow: I think so. Some of the American galleries were endowed, I guess, before income tax. Cleveland is an incredible example. They sit on Fort Knox; they have an \$85-million endowment to work on. You have all heard of the Getty situation, in which they have got that order of money to get rid of each year from their endowment.

Mr. Epp: Do you have people who leave their life insurance policies and so forth to the gallery?

Mr. Withrow: This is one area we are starting to develop. We never had time to really work at it, but there is a bequest program under way at the moment. I do not know how many multimillionaires we have.

Mr. Epp: Oil stock, something like that.

Mr. Chairman: Do you get any oil stock these days?

Mr. Epp: Suncor?

Mr. Withrow: We have been given some stock in the past, but not recently.

Mr. Epp: How does your membership, at 30,000, which seems to be holding, compare with that of Baltimore?

Mr. Withrow: We believe it is a world record. I found it difficult to track this down, but it is certainly very close to a world record on a per capita basis if we regard greater Toronto of 2.5 million as a base. And we are talking about North America, because European galleries do not have memberships; they just do not do it.

Mr. Epp: I see. I was going to ask about that.

Mr. Withrow: They have been asking us now in the past five years how to get a membership, how to put a volunteer committee together, and we are quite involved with that in France, Italy and other places. But in North America, where they have been working at memberships very hard for a long time, Chicago leads with 48,000, but it is a city of eight million and there is no other museum. There is a little museum of modern art there, but the main general art museum, the Art Institute of Chicago, is it, whereas we have in Toronto the Royal Ontario Museum with its membership. So I think we are justified in being proud of the 30,000.

Mr. Epp: I want to get back a little to something you touched on earlier, and that is the debentures. You got that \$12.5 million from the government, which was back in 1971 or some time around there. You sold debentures. Is that part of that debenturing process, or am I getting two things mixed up?

Mr. Withrow: No.

Mr. Epp: You sold debentures, and the government now is paying off those debentures in addition to the regular operating grant you are getting from the government every year of what? \$4 million? How much are you getting?

Mr. Hopcraft: Yes. The debenture retirement is in addition to our operating grant.

Mr. Epp: Yes.

Mr. Hopcraft: As far as the art gallery as as an institution went, it received the grant from the province of Ontario. I think there was an agreement between the then Minister of

Colleges and Universities and the Treasury that debentures would be issued and retired in the name of the Art Gallery of Ontario; but as far as the institution went, we just got a grant.

Mr. Epp: I see.

Mr. Withrow: We did not touch the debentures.

Mr. Epp: You did not have anything to do with them.

Mr. Withrow: We never saw them.

Mr. Epp: Just a kind of an inner thing with the ministry.

Mr. Withrow: It was a ministry-Treasury bookkeeping device.

Mr. Hopcraft: It is a requirement to put them in a financial statement (inaudible) from the audit--

Mr. Epp: Why did they go that route? Why would they issue debentures in the name of the gallery and then retire those debentures? Why would they use that as a bookkeeping device? Do you know?

Mr. Withrow: I can only think that this was the way they did it with the universities, which were expanding at the time. We were lining up with the universities for our provincial subsidy--grant--at the committee and at Colleges and Universities, and I think that was the mechanism they were using in those days, so they felt we would fall in line.

Mr. Koerner: I think you are absolutely right, because I think this was your ministry at one stage, Mr. Kerr. That is precisely the way universities are trying to--I am involved in York University, and we have a huge debenture issue that does not appear on our books for the same reason that this particular sum does not appear on our books.

It might be useful, if anybody wants to read the detail, to note that there is a footnote in the financial report of our annual report which I think you all have. It is on blue paper and it is little "(i)," under "Notes to Financial Statements," on the right-hand side. It is quite explicit and I think covers the issue you were questioning us about.

Mr. Epp: Which page is it on?

Mr. Koerner: It is precisely in the middle. It is where the thing splits open and it is on the right-hand side, "(i) Province of Ontario Financing."

Mr. McLean: Second paragraph from the bottom?

Mr. Koerner: That is right. That is the one, Mr. McLean.

Mr. McLean: Just to follow it up with a question: In regard to the Chicago one you mentioned, what percentage would they get from the state or the Senate or what percentage funding do they get?

Mr. Withrow: I am not familiar with the funding of that institution, but again the situation in America is extremely varied. They get better federal granting from the humanities operation they have in Washington than they do from the local state. Some of them get quite good funding from the county and/or the city. The state funding for the arts, with the exception of New York state which has led the parade--Michigan has come in recently--has really been pitiful, but they get much better funding from their cities or counties than we do.

Mr. McLean: So would you say there is more than 70 per cent funding by governments?

Mr. Withrow: No. The American pattern, I would say, is that the larger percentage is private still. The smaller sum, that is somewhat under 50 per cent, is government at various levels. The Canadian picture right across the nation is very similar to ours: 70 per cent or so government, 30 per cent our own efforts.

Mr. McLean: You said theirs was 50 per cent, though?

Mr. Withrow: In the United States, yes.

Mr. Koerner: There is a factor there, Mr. McLean, which relates more to federal tax policy than anything else, but it is important to note that American donors, be they individuals or corporations or foundations, operate under a tax structure that induces more gifting to institutions like, say, Chicago than the Canadian system. Particularly at the foundation level, the American tax system is more beneficial to gifting than our system.

Mr. J. M. Johnson: This morning, Mr. Withrow, you showed us some storage room and you mentioned a rental program that you have. Do you rent art, the pictures, as well as the sculpture?

Mr. Withrow: That rental program has, I would say, almost nothing to do with our permanent collection. Those things are brought in on consignment from dealers and, if the artist does not have a dealer, from the artist directly. We try to deal with the dealers if we can and we make sure that the dealer gets a percentage back to the artist. The individual or corporation rents, I think it is, two per cent of the market value per month.

Mr. J. M. Johnson: You just act as agents for the dealers?

Mr. Withrow: That is right; we act as agents.

Mr. J. M. Johnson: Is there any feasibility in having a rental program with your surplus art? You have quite a large storage space and you have many pictures there. If you could decrease art in storage, you should be able to decrease your insurance and pick up some rental from the art.

Mr. Withrow: The difficulty is that the minute we got it rented out, it would be wanted for an exhibition, and that really is not an exaggeration. It is not dead storage, as I think I tried to stress.

Mr. J. M. Johnsoln: It is constantly moving.

12:20 p.m.

Mr. Withrow: Yes, we are really using it all the time. With the exception of a few odd things, the object is on our walls or somebody's walls at least once every three years, and some of it is really constantly on the move.

We thought about this. We have also thought about de-accessioning, that is, selling some of the things that might be duplicate or extra or overlap in some way, but I am afraid the things we might want to get rid of, and they would be few, are the very things the market has no interest in either.

We shun that, we have stayed away because it gives to potential donors a wrong impression. The Metropolitan Museum in New York got into a lot of trouble two or three years ago by selling some things that had been given to the museum, and it was not good.

Mr. Watson: I would like to touch on the aspects of security. An intriguing thing to me, and maybe for some of us who are not so appreciative of art, is the problems you have with security and thefts and the value that these seem to become, the suspicion some of us have that when something is stolen it is automatically three and four times the value, and those kinds of things. What percentage of your budget would go into security, and is it a costly problem?

Mr. Withrow: Yes, it is a costly problem. As the city has grown, the statistical chances of odd people, in terms of vandalism, and the fact that a large city attracts international art thieves who are professionals, is more of a problem today than it was, say, 10 years ago. For exact figures I think Mr. Walford, who is in charge of security, can give you something on that. He is concerned about the fact that our staff is somewhat smaller than it should be.

Mr. Walford: Security is a special problem in our business because the objective of the institution is to make the art accessible to the public. At the same time, we hold the art in trust for the public and have to prevent any theft or vandalism to it.

Our building, when originally put up, was basically state of the art. In other words, the security systems, of which there are a number that operate in tandem with a human system, were in very good condition. That was 10 years ago. Unfortunately, crime and theft of art and vandalism to art has increased rapidly in the past few years, particularly in Toronto which was quite free of it for many years, and we have been a little bit outpaced, I think, in terms of the sophistication of our system relative to what is available now.

The big threat formerly was vandalism. In other words, you can have as many sophisticated alarm systems as you like for anti-theft and you can build the building so that it has security inherent in it, as we have. I think the threat that remains is simply keeping people from slashing at paintings, which has happened in our institution once, and from doing other acts of vandalism. The only way to prevent that basically is to have staff.

The Art Gallery of Ontario, and it reflects the lack of a problem in this city up until recently, spends about 10 per cent of its annual operating budget on security, about \$600,000 at the moment out of a \$7-million operating budget. Comparable American institutions would spend up to 50 per cent on security, and that is a fact.

Mr. Withrow: Detroit.

Mr. Walford: Detroit or the National Gallery of Art in Washington has something in the order of 600 on its staff and 300 of them will be security. In our case we have a staff, full- and part-time, of approximately 260, and we have less than 40. It gives you a little idea of the ratio that we are working on. We like to think that the problem still is not with us at the same level as it is in places like Detroit and Washington, but there are certainly indicators that is beginning to change.

We are currently in the process of looking at all of our hardware in the building and hope to find the rather significant funds that I am afraid are required to update it in the near future. Also, we have gone on an extensive reorganization and retraining of our security staff, to use what staff we have as effectively as possible.

The gallery has changed many of its procedures as well. We have tightened up in the last year on access to and egress from the building and how we check people through into more secure areas. For example, you were all given a badge this morning. We do things like that. It remains a problem, but I still think the principal problem is having enough people to deter would-be vandals. Theft remains a problem as well. We had one last year, and we hope we can prevent any further ones.

Mr. Watson: It is somewhat oversimplified perhaps, but I do not understand how a stolen art piece can be worth that much money. Does somebody hang it up in their living room and say, "This is the one I stole from the Toronto art gallery"?

Mr. Withrow: It is an absolute mystery to us. We had our first theft in 23 years, as Mr. Walford just said, this last year. What the person who apparently commissioned the thief to choose it and run off with it is going to do with it, other than enjoy it in the privacy of some secret room in his castle in the centre of South America, I do not know.

Mr. Walford: There are some theories concerning the disposition of stolen art objects. The piece in question was a Picasso bust that was here on loan from a dealer in New York last December. It was a bronze bust and was one of a number of castings of a similar piece.

The prevailing theory with many of the police agencies now is that art has become a very popular form of collateral with the underworld, with organized crime. They use it to trade back and forth as favours instead of money. It also has considerable value for extortion because of its obvious aesthetic and material value.

Mr. Chairman: Insurance companies will pay money for it sometimes.

Mr. Walford: Insurance fraud is another angle which I think is probably part of it. Insurance premiums in the art field have hitherto been very reasonable and very low in relation to the values insured. As we found out, particularly during the Vincent Van Gogh exhibition, they dramatically took off owing to the problem of the logistics of moving very valuable objects all over the world through various ports and terminals, transporting and handling them.

Mr. Epp: When you transport something like that, would there be one or two people who would constantly accompany that art no matter where it goes?

Mr. Withrow: Yes, a courier.

Mr. Epp: They would follow it from here to England?

Mr. Walford: For example, we do not have any of our property stored anywhere in New York City overnight any more. We will arrange everything so that if we send in a truck it goes in and comes out the same day. Similarly, we would not use a terminal in New York. You cannot do it any more. You ship it through; you do not leave it.

Mr. Withrow: It might be of interest to the committee to know that national galleries throughout the world do not have insurance. Our own National Gallery in Ottawa has no insurance on its permanent collection. They take out insurance when they have other people's art on their premises, but that is the only time. The idea is that, like our collection, it is not replaceable; it is irreplaceable.

There is also the idea, which was current a few years ago, that if you did not have insurance and you advertised the fact that there was no insurance there would not be thefts, because some of the thefts were ransom situations. That has proved to be erroneous. Mr. Walford's talk of the underworld is much more likely.

Mr. Watson: That is the only theory you have? I am interested to hear you say you do not understand it either.

Mr. Withrow: I do not at all.

Mr. Watson: It always seemed to me that the more unique something became, the more valuable it became. Yet if you are not going to show it some place, what good is it?

Mr. Withrow: My experience with collectors is that most of them are not investors but are art lovers first and foremost. What they love to do is share and show off the art they own. To have to enjoy it secretly seems to me very strange.

Mr. Charlton: When you described the theft of the Picasso, you sounded like you know where it has gone. Is that correct?

Mr. Walford: No. I did not mean to sound that way at all.

Mr. Chairman: Probably it is in some trustee's home.

Gentlemen, I think we will adjourn now and come back at 1:30. I understand we want to get away no later than 3:30 p.m., so that will give us an hour for lunch.

Mr. Epp: Are there a lot more questions?

Mr. Chairman: Yes, I think there will be. I have at least six myself. I am sure other people have some.

The committee recessed at 12:31 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

AGENCY REVIEW: ART GALLERY OF ONTARIO

THURSDAY, SEPTEMBER 9, 1982

Afternoon sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breagh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
McLean, A. K. (Simcoe East PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher, Legislative Library

From the Ministry of Citizenship and Culture:

McCullough, J. D., Assistant Deputy Minister, Arts, Heritage and
Libraries Division

Witnesses:

From the Art Gallery of Ontario:

Hopcraft, T., Controller

Koerner, M., President

Walford, N., Corporate Secretary

Withrow, W., Director

LEGISLATURE OF ONTARIO
STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, September 9, 1982

The committee resumed at 1:43 p.m. in committee room 2.

ART GALLERY OF ONTARIO
(continued)

Mr. Chairman: When we recessed, Mr. Watson was questioning. Do you have any more, Mr. Watson?

Mr. Watson: I would be interested in the security thing.

Mr. Chairman: Do you have something, Brian?

Mr. Charlton: Yes, Mr. Chairman, I do not remember which one of you it was but during the course of the presentation and discussions this morning, you mentioned some of the financial problems over the last several years and some retrenchment, some programs that had to be cut or curtailed. Could you tell us what those programs were and who were affected?

Mr. Withrow: The only program that remains cancelled as a result of that cutback is an experimental film and performance program item that we have not been able to get back on the rails. It had a small but intensely loyal audience, a very small group of people who were very vocal about our cutting it out because they cared about it. That is the only one. The others we have been able to gear up again, and all this year I think we have been at the same level or better than we have been.

Mr. Charlton: What other programs were affected temporarily?

Mr. Withrow: We had to reduce our service in the audio-visual, that is the loan library which deals with slides, films and video tapes and so on. That is up to level again. We had to restrict the usage of the book library. We have worked out a compromise now which I think looks after everybody who really has to use that library. We are encouraging people who do not have to use it, because it is a specialist research library, not a lending library, that it would be more effective to use the marvellous resources up at Bloor and Yonge, the Central Library, which has a fine art section. If people say they want to know something about Tom Thomson, they should not be in our library. It does not make sense.

Mr. Charlton: I think, Mr. Koerner, in your presentation this morning you used a phrase which was perhaps "pleading our case." You were certainly talking about money.

Mr. Koerner: I should have said that if I did not say it.

Mr. Charlton: I think that is probably what you said but I was not positive so I did not want to throw it out as a quote. If

government funding towards your operating budget continues to shortfall inflation, what kind of programs will be endangered over the next few years?

Mr. Koerner: I think I would rather have the director answer that because he sets the internal priorities. We have already tried to scale back without harming the programs. Mr. Walford spoke about our efforts to be more efficient. We are doing all the obvious things right down to word processors. We use a computer more than you would suspect. Was that shown to the members when they visited?

Mr. Withrow: We just said, "There is the computer room," as we passed it.

Mr. Koerner: It is probably worthy of more than just that. We are trying to keep up to date and through that become more cost efficient and productive. But there comes a point when something has to go.

Mr. Charlton: Yes, I think it was Mr. Walford who mentioned you had reached that point on the curve. What kinds of programs will be endangered? What would be the first things you would have to look at cutting if the shortfall in relation to costs continues?

Mr. Withrow: I am not putting my head in the sand about this but I am very reluctant to talk about it because I am optimistic about a turnaround in the economy in time, but it certainly is a downward spiral which could go wildly down and I guess we should talk about it.

Mr. Charlton: I do not even want you to necessarily earmark specific programs. Just tell me about the kinds of programs that would have to be looked at in cutting and the category of groups that would affect.

Mr. Withrow: What we have tended to do is look at our mandate very carefully and balance one thing against the other. Instead of cutting out one big section which we might not be able to get going again because of certain staffing problems--trained staff, particularly in a small country like Canada, is very precious--and to close up a department is really devastating and you might not get it going again. What we have tried to do is to pull back on all fronts equally. That sounds like we are not facing up to the realities, but that is what we have done to date.

If you want to talk about real disaster, there might come a time when we would have to talk our donors into diverting to programs what they are giving us for our purchases. Again, I hope not entirely, but there is that possibility.

Mr. Koerner: I have talked to donors of the gallery and let me suggest that would be a very difficult thing to do because the people I know--and Bill would know more of them than I--tend to want to give art. They identify with that process. To try to convince them to allocate the same dollar amount to plugging a deficit I think would be a great job of salesmanship.

Mr. Charlton: I think even if they are giving money as opposed to art, the donors like to see some kind of a tangible, concrete, visible form of their contribution to the gallery.

Mr. Koerner: Precisely. If I can pursue one thought, other museums are faced with the same problem we are; namely, how do you allocate a scarce resource and what are your priorities? Let me tell you, I am always appalled when I am travelling and I get to a town where I want to see a museum and I am there on a Wednesday and the sign says "Chiuso," and that happens more in Italy than any place I have travelled. That is a funding problem. What is the point of supporting a great art gallery in a city like Toronto and closing doors? Yet that is one of things I guess one would have to look at.

Mr. Withrow: It happens now in Detroit and Philadelphia where there are certain certain floors of the museum closed on alternate days. That comes back to Mr. Walford's mention of the proportion of guards. Their guard complement and their labour costs for security are so high that they cannot keep the place open. We are a long way from that sort of disaster.

Mr. Eichmanis: Excuse me, if I can pursue this line of questioning a little further, you have, as I understand it, an Art Gallery of Ontario Foundation and there are certain endowment funds invested through that foundation. Could you explain to the committee how that works and how you, as the art gallery, get the money from that foundation and so on?

Mr. Withrow: There are two funds, A and B; A is for art purchase, B is art purchase and exhibition. There is a clause for some sort of disaster like the roof falling in. That foundation has a separate board and their charter of incorporation gives them the responsibility for investing those funds and looking after them, but they have no power to do anything but hand that money over on a schedule to the Art Gallery of Ontario for its purposes.

Mr. Eichmanis: How much is in that fund now?

Mr. Koerner: Can I just answer that? I sort of figured you would be asking that. The figures are impressive but by no means solutions to the sort of problems that we see ahead. The gross assets as of March 31, 1982, were \$3.89 million, and the excess of receipts over disbursements for the year ending on that date were \$395,000. That is important, but we are dealing with a \$12-million annual budget, and inflation is running at 10 per cent. That is 10 per cent of \$12 million. If all the foundation were put into the budget, we could not cope with inflation, just to relate the two.

1:50 p.m.

Mr. Eichmanis: Still, that is a source of money for you.

Mr. Koerner: Some of it, as Bill suggested, is designated.

Mr. Charlton: Does any money actually go into the day-to-day operation or is it just for purchases of art and for exhibitions?

Mr. Withrow: In a way, exhibitions are operations, because they involve so many of the things we do. It is in educational programs that are associated with the exhibition. It really is operations. It is not heat and light.

Mr. Chairman: Mr. Koerner mentioned earlier that the replacement value of the building is about \$125 million. I think you said the value of the property, the paintings and things of that nature was around \$250 million. That is a big store, if you like, and I wonder if you are satisfied that you are generating the greatest possible revenue without really curtailing your activities or making the gallery less accessible to the public generally.

In other words, have you thought of every possible way of generating revenue? I was a little disappointed in that you really do not seem to be making any great profit from these major exhibits that you have. In one case, the Tut one for example, you covered expenses. I am sure, as you imply, that you made more than that and there are certainly a lot of ancillary benefits that come from an exhibit of that kind. But in view of the popularity and the status of the gallery, I am just wondering if you had thought of every possible avenue. I am not suggesting that you get Honest Ed in there or anything like that, because this is not the purpose of an institution such as yours.

Mr. Withrow: It is the balance I spoke of just before lunch that concerns me, particularly public access. The only way that we could make money on these exhibitions would be to charge \$15-\$20 a ticket as the ballet and opera have had to do for some years. I would hate to see our admission price go that high. Whether the market would bear it is another question, and it might, but it would be a particular market and not the broad market that we really feel we should be reaching. As for the "show-biz" aspects, we are really working very hard at that within a certain dignity limit.

Mr. Charlton: Does the Royal Ontario Museum or the Ontario Science Centre compete with you in any way? I realize they are two separate functions or two separate types of institutions, but whenever I hear about the Chinese exhibit, for example, which is very popular, I realize that is not strictly--

Mr. Withrow: When someone goes to either the ROM or the Ontario Science Centre I do not think they are choosing that rather than us. There are a lot of things going on in the city, but competing would have to focus on whether we are overlapping. We make very sure by constant communication, formal and otherwise, that we do not do that.

As you know, the ministry calls together all the heads of the agencies about three or four times a year in a meeting that is called CALM--cultural agencies liaison meeting. The meetings are not very calm because we work out all these sorts of problems together.

Mr. Chairman: I am thinking, for example, about a new artist or somebody who is on the way up, such as an artist by the name of Chisholm I met this summer on Cape Breton Island. He has just opened a gallery and he is talking about coming to Toronto but he is talking about getting a suite of rooms on the mezzanine in

some hotel or maybe involving a private gallery. I would think you would be interested in having him exhibit at the Art Gallery of Ontario. He could probably enhance your coffers and he would still be able to do better than at some other site. At the same time, it just seems so natural that he is there and you are publicizing his attendance.

Mr. Withrow: Yes. Mr. Chairman, you raise two issues really. One is that there are some estimated 4,000 professional artists registered in Canada. There are many more who are trying to be. We have them literally lining up at our door all the time.

The second issue is whether we should be competing with the commercial galleries in town. I do not think we should. Fortunately, we have a very healthy commercial art gallery scene in Toronto. The committee might be interested in knowing that, without a question, we are the centre after New York for commercial art. It is strange, but Chicago and Boston just do not compare in the number and quality of commercial art galleries.

There is also a growing number of opportunities in Toronto for up-and-coming artists in alternate spaces. There are two spaces which are funded by the Ontario Arts Council and then there is Harbourfront. If an artist has talent, I really believe that today--this was not always true--in Toronto, he will have exposure.

Mr. Koerner: Mr. Kerr, you raised a question of competition between the Royal Ontario Museum, Ontario Science Centre and the art gallery. I think there is one place where we do compete, which is of concern to all of us, and that is we are all trying to tap the same private resources for money. We are all looking at the same corporate donors. We are going through, in the economy, a period of considerable hardship. I think there we are competitive.

We feel it because if you go to a particular corporation, chances are their donation budget has been slashed, and the chances are that ROM, AGO, the Science Centre, the symphony, the opera, the ballet and endless other worthy causes are in there asking for more. In that sense we compete and that scene is fairly tough right now.

Mr. Charlton: That raises another question in terms of the competition. You mentioned, when you showed us the Italian statue this morning, that it was something that normally would not be at the gallery but would likely be at ROM, but because they were not in a position to take it right now, you took it.

It seems to me, for example, with something like the Tut exhibit, normally you would more likely expect to see it at ROM. Under normal circumstances, would you be in a competitive position with ROM to get an exhibit like that?

Mr. Withrow: No.

Mr. Charlton: Would you both be bidding for the same thing on any occasion?

Mr. Withrow: No. I went after the Tut show because I felt it should come to Toronto. I phoned the director of the ROM and he

was not able to take it.

Mr. Charlton: There would be no occasions when you would actually be competing to get the same exhibit.

Mr. Withrow: No. We have mapped out areas of collecting and exhibiting and the only area in which it is a little grey is with the Canadiana Gallery and our historical Canadian collecting. The rather fine line of distinction is whether the particular work of art or old map or whatever they are after, either to buy or to have donated, is historical or aesthetic. If it is more aesthetic, we take it. If it is more historical, they take it. The staff is in constant co-operation.

2 p.m.

Mr. Chairman: Has the Royal Ontario Museum reopened yet?

Mr. Withrow: They are phasing their opening and they will not be fully open until March, I understand.

Mr. Chairman: You may notice them a little more than in the past with that new building and bigger budget.

We have touched on this before, but I was wondering about the fact that you are the Art Gallery of Ontario rather than of Toronto. Have your budget concerns in any way curtailed your influence in the rest of the province? You had some sort of an arrangement with schools and libraries regarding the lending of some paintings and small exhibits. Does that still go on?

Mr. Withrow: We are still very heavily doing that. There was a slight hiccup as we amalgamated what had been formerly an extension service that operated in an offsite warehouse and when we were able to move that into the new building we had intended to amalgamate. Under the pressure of reduced funding, we felt we should do so for efficiency. It has worked very well. I would say there was a hiatus of only three or four months when the service might have been somewhat less than desirable. We are back in full flight now.

Mr. Chairman: You even go to Windsor?

Mr. Withrow: Yes, on Friday night I am going to be opening a show, not in Windsor but in Sarnia, which we helped the Windsor gallery put together.

Mr. Chairman: Have you any policy as far as exhibits of the types of Canadian artists I was talking about, sort of on the rise?

Mr. Withrow: Yes, there is a space in the gallery which is devoted to exploring young, innovative artists and that is what its purpose is. Dr. David Burnett is in charge of that program. He is curator of contemporary Canadian art and he tries to put in, not one, but two or three artists in concert to expose them constantly. The space is calculated to be where it is so that international visitors will be forced to walk through Canadian art on their way to the Henry Moore Centre. It is on the ground floor in a very

prominent space and the artists who are shown there are very happy. The artists who are in the lineup are unhappy because they are not in there, but it is the nature of the beast, I guess.

Mr. Chairman: Do you anticipate any major capital expenditures? I am thinking mainly of the older part of the original building.

Mr. Withrow: The building is ageing and it is somewhat complicated by the fact that it was a new building built around an old one. The roof has been giving us some trouble in the older section. Then we have some trouble with our fans and other climate control equipment that is starting to need replacement. That is the most dramatic area, but we have that tied down. We did an engineering study which amortizes that sort of thing over the years and it looks as though we will be spending from \$200,000 to \$250,000 on that kind of trouble from here on in.

Mr. Chairman: Let us hope they sell more lottery tickets over there at Wintario. Are there any other questions? Thank you very much, Mr. Koerner, Mr. Withrow, Mr. Walford and Mr. Hopcraft. I appreciate your attendance and, again, thank you for your hospitality this morning at the gallery. The committee members were very impressed with their tour and I think when they get home and tell their wives what they did this morning they will be back again very shortly. Doug, did you want to say anything?

Mr. McCullough: Thank you, Mr. Chairman, I really did not intend to say anything but rather to be here in case I was needed and to report back on the reception the gallery got. I am delighted with it. I was delighted, by the way, with the briefing notes made by your people. I thought they were very good, very fair and gave a very accurate picture of the gallery and the relationship with the ministry.

You asked at one point about competition with the Ontario Science Centre, the museum and the gallery. What we have achieved in Ontario is, rather than being in competition, each builds on the other. If somebody comes to Toronto to see the gallery, it is a natural thing for him to go on to the museum, on to the Science Centre and vice versa. Toronto has become a cultural mecca and is becoming more so by the day. Rather than competition, it is like Simpsons being next door to Eaton's, or Macy's being next door to Gimbel's. They are a natural draw.

The gallery has outlined the problems we face in funding. We have not been able to keep up with inflation. We think the gallery has led the way in sponsorships, which is a very imaginative way of dealing with the situation because, as I understand it, it takes the contribution a corporation might make out of the donations bracket and puts it into the advertising bracket, which is much more easily accessible to institutions like the gallery. I hope that might be something we can look forward to in the future. As I know you are all aware, we have very severe financial constraints. Thank you.

Mr. Chairman: Thank you, Mr. McCullough, very much. Thanks gentlemen. The committee has a few more things to discuss.

The committee continued in camera at 2:08 p.m.

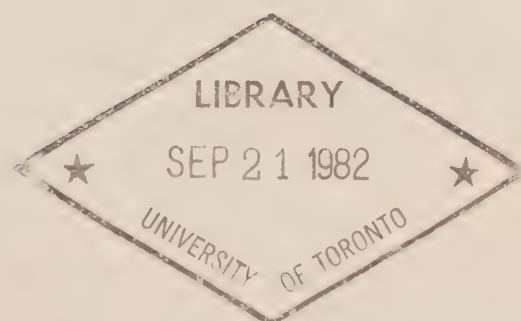
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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

AGENCY REVIEW: CIVIL SERVICE COMMISSION

FRIDAY, SEPTEMBER 10, 1982

Morning sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
McLean, A. K. (Simcoe East PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher, Legislative Library

Witnesses:

From the Civil Service Commission:

Hansen, J., Executive Secretary, Senior Appointments and
Compensation

Jackson, J. A., Executive Director, Compensation Division

Scott, R., Executive Director, Staff Relations Division

From the Ontario Public Service Employees Union:

O'Flynn, S., President

Todd, A., Chief Negotiator

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Friday, September 10, 1982

The committee met at 10:10 a.m. in committee room 2.

CIVIL SERVICE COMMISSION

Mr. Chairman: Gentlemen, I see a quorum. I call the meeting to order. We are dealing with the Civil Service Commission today. We have Sean O'Flynn, who is president of the Ontario Public Service Employees Union and also Andrew Todd, who is chief negotiator of OPSEU. I assume, Mr. O'Flynn, you have a presentation you want to make.

Mr. O'Flynn: We have, indeed.

Mr. Chairman: Is it the one called Long Overdue Changes?

Mr. O'Flynn: That is right.

Mr. Chairman: That is the one. If you would like to carry on, feel free.

Mr. O'Flynn: Sure. Thank you very much, Mr. Chairman, for this opportunity to tackle an old problem from a different vantage point.

The first item we have in our brief is the statutory responsibility for the Crown Employees Collective Bargaining Act. In essence, the situation is that the Chairman of the Management Board of Cabinet is responsible for the civil service and is responsible for civil servants. He also is responsible for the Crown Employees Collective Bargaining Act and any other acts that relate to civil servants and relate to the union. We think this is wrong. We think he should not be wearing two hats. This is not something that we dreamed up yesterday; it is something that we have been concerned about for many years and we have made many presentations to the government to have this changed.

More recently--of course, in these terms "recently" is within the last three years--we approached the Chairman of the Management Board of Cabinet and told him we wanted something done about this. What was done was to appoint Weiler to make a report. I have handed to your committee copies of our submission to Weiler which is Statutory Responsibility for Crown Employees Collective Bargaining Act, and the Weiler report itself. I have handed you copies of both of those.

I will not waste your time by going over the first 52 paragraphs in this submission which restate the obvious and restate the case. We think it is about time that action was taken on this issue. The Weiler recommendation is very clear. It says, "Yes, the union has a legitimate concern here and that concern should be recognized as a concern and should be addressed," and "Yes, the most reasonable place, the logical place to put responsibility for the

legislation is in the Ministry of Labour." I am sure there are no lawyers on this committee, but every lawyer, in order to continue making his living, has on the one hand and on the other hand. So he says, "On the other hand, if you are concerned about giving the wrong message to the union about change in your philosophy or your approach to industrial relations, if you are concerned about the union getting the wrong message, then do not do it." Do nothing, of course, is a great policy.

However, I would say that when there is a legitimate grievance on the part of the union such as ours and that is not addressed, what we are being driven to is to break the law, because the law is an ass in this case, and we should not be driven to those extremes. We have knocked on every door, including the Premier's, on this issue, and we are knocking on your door now. We are asking: "What more do you want us to do? Do we have to kick it down? We do not want to kick it down because we like a nice, peaceful life as much as you do. But we should not be driven to those extremes."

That is the issue in a nutshell and that is covered by the first 52 or 53 paragraphs. So I will not trouble you by reading through them. That is the essence of the case as best as I can describe it. But I hope we will get some redress in that regard and redress is not putting the responsibility in the office of the Attorney General. We do not have any particularly affectionate regard for the office of the Attorney General and we do not want to go there or any other place except the Ministry of Labour.

Mr. Chairman: Mr. O'Flynn, in order to get some of this report and submission you are making to us on the record, if you would like at least to refer to your summations or your recommendations in the report--I realize you do not want to read the whole thing.

Mr. O'Flynn: I will read the whole thing. If that will put it in the record, I certainly will read it.

Mr. Chairman: Looking at page 19, for example, you have a list of recommendations there why you feel there should be a change in the present setup in the interest of collective bargaining. I think a lot of this should go on the record.

Mr. O'Flynn: I will read it for the record.

Mr. Chairman: All right; thank you.

Mr. O'Flynn: Statutory responsibility for the Crown Employees Collective Bargaining Act: What is at issue?

Simply put, in an adversarial system of collective bargaining, can an employer both represent itself, an employer, and at the same time be a fair administrator of the legislation governing the collective bargaining relationship? If that legislation favoured the employer, would it as administrator be prepared to recommend changing the legislation to reduce the advantage it has at the bargaining table?

In his report to the government of Ontario dated April 27,

1982, special adviser Paul C. Weiler stated: "Collective bargaining between the government of Ontario and its employees is governed by the Crown Employees Collective Bargaining Act.

"Section 1 of that act selects the Management Board of Cabinet to represent the government as employer:

"'(2) The employer may be represented, in the case of the public service, by the Management Board of Cabinet, and in the case of an agency of the crown, by the body designated by the regulations.'

"Section 1(1)(j) of the act is not as explicit about which minister is to be responsible for the legislation itself:

"'"Minister" means the member of the executive council to whom the administration of this act is assigned by the Lieutenant Governor in Council.'

"However, by order in council of 1972, the cabinet had designated the Chairman of Management Board as the minister responsible. Stated quite simply, the main problem posed for my inquiry is whether these two roles are compatible, one with the other. There is a second issue subsidiary to this one. If it is judged that the Chairman of Management Board should give up this authority over the act, another minister must be designated in his place. Should it be the Minister of Labour or some other member of the cabinet?"

Those are quotes from Weiler's report, pages 1 and 2.

The Chairman of Management Board of Cabinet--as employer and legislator: Industrial relations in the Ontario government are regulated by the Crown Employees Collective Bargaining Act (CECBA). This legislation provides for the establishment of two administrative bodies which play a central role in regulating industrial relations, the Ontario Public Service Labour Relations Tribunal and the Grievance Settlement Board.

The Chairman of Management Board of Cabinet has been designated as the minister responsible under CECBA for both the tribunal and the grievance board. It is through the Chairman of Management Board of Cabinet that these bodies report to the Legislature. It is the Chairman of Management Board of Cabinet who responds in the Legislature to questions related to the administration of industrial relations in the government sector.

Further, it is the Chairman of Management Board of Cabinet who recommends funding levels for these bodies and thereby controls the staff which will be made available to them and the calibre of talent they will be able to attract. When an impasse is reached between the union and the government over appointments, it is the Chairman of Management Board of Cabinet who recommends to the cabinet how this matter should be resolved. Finally, as the minister responsible for CECBA, it is the Chairman of Management Board of Cabinet who also judges whether amendments to the legislation are necessary or timely.

The Chairman of Management Board of Cabinet is both a member

of the government and the individual who acts for the government in its capacity as employer. It is unwise and borders on the improper for someone who clearly acts for the government as an employer also to serve in the capacity of receiving reports from the tribunal and the Grievance Settlement Board to be accountable to the Legislature for these bodies and to have a direct involvement in the budgetary process of these bodies.

10:20 a.m.

OPSEU does not dispute that it is necessary to designate a minister as responsible for the administration of CECBA. However, the Chairman of Management Board of Cabinet also acts as chief negotiator for the government in its industrial relations. In short, the chief referee is also the coach for the other team.

OPSEU recommends that responsibility for the administration of the Crown Employees Collective Bargaining Act be transferred from the Chairman of Management Board of Cabinet to the Minister of Labour.

The Weiler recommendations: In his report to the government of Ontario, Mr. Paul C. Weiler recommended: "That the Chairman of Management Board give up his responsibility for the administration of CECBA, if and for so long as he continues to represent the government as employer under the act. In my view, the Minister of Labour is the natural candidate to replace the Chairman of Management Board in this role." That is from page 10 of the Weiler report.

As a fallback position he added, "However, if the government is seriously concerned about any misinterpretation which might be put on such a transfer, I recommend that a Minister without Portfolio be designated instead." This was the other hand that I referred to earlier.

We strongly urge acceptance of the recommendation that the Minister of Labour be responsible for the administration of CECBA and not a Minister without Portfolio. Our position is clear on this matter and was first presented in our brief entitled Statutory Responsibility for the Crown Employees Collective Bargaining Act, March 1982, where we argued against employing a minister without portfolio.

We stated: "The one argument favouring designation of a Minister without Portfolio as responsible for CECBA is that such a minister would have few, if any staff under his authority. Thus such a minister would not be as conscious of narrow employer interests in reviewing the rules which govern industrial relations between the crown and its employees.

"However, this advantage is achieved at the price of designating a minister with no day-to-day access to expert counsel on industrial relations. Appointment to the position of Minister without Portfolio is typically the first step to more senior posts or the last step on the way out of cabinet. Tenure is sufficiently brief that no thorough review of a policy area is likely to occur.

"Indeed, ministers without portfolio lack the staff to conduct major policy reviews. Indeed, the junior status of such ministers is underlined by the Legislative Assembly Act which remunerates them at a lower rate than ministers assigned portfolios."

It is worth while restating Mr. Weiler's rationale for making his recommendation. Weiler first examines the pattern in other jurisdictions in Canada--see table 1. He notes:

"Of the 11 Canadian jurisdictions, British Columbia, Nova Scotia and Manitoba have joined Ontario in seeing no conflict in these roles. (Interestingly, in Manitoba it is the Minister of Labour, not the Chairman of Management Board, who fulfils this dual role.)

"The majority persuasion, though, is to separate the two functions. Of the seven Canadian governments which take this latter tack, four (Quebec, Saskatchewan, New Brunswick and Newfoundland) put their Ministers of Labour in charge of the crown collective bargaining legislation. Three select a different minister: Ottawa, the President of the Privy Council; Alberta, the Attorney General; and Prince Edward Island, the Minister of Justice.

"In sum, while the majority of jurisdictions divide these two functions, and most of these assign ministerial responsibility for the legislation to the Minister of Labour, there is by no means a broad consensus for this position."

OPSEU's argument on fairness: Weiler summarizes OPSEU's position as follows:

"OPSEU's argument against the current arrangement has two distinct themes. First, it is asserted that the present assignment is unfair as a matter of principle. The Management Board of Cabinet acts on behalf of the government as employer in negotiating with the union which represents the government employees.

"At the same time, the Chairman of Management Board is responsible both for the administration of and, more important, the initiation of amendments to the Crown Employees' Collective Bargaining Act, the legislation which governs this bargaining relationship between government and union. OPSEU believes that there is an inherent conflict in these two roles"--page 5 of the Weiler report.

Weiler's response to OPSEU's position is to state the following:

"This still leaves the problem of the fairness, or at least the perceived fairness of the current assignment of responsibility for CECBA. Although it is true that the cabinet will make the ultimate judgements about the shape of this act, in the normal course of events the initiative for proposing any amendments comes from the minister responsible for its administration. More important, it is this minister and his senior ministerial officials with whom an affected party such as OPSEU will discuss the current state of the legislation, and to whom it must directly make its case for reform.

"As to some possible changes, the union and the employer may share a common point of view. Not surprisingly, there will be many issues about which there is a sharp divergence of interest. OPSEU insists that it should not have to make its case about the latter to the very people who are its opposite numbers at the bargaining table under this same statute. I have no reason to believe that the current channel of communications to cabinet, through the Chairman of Management Board, has actually made any difference in the fate of the union's proposals. It is evident, though, that OPSEU feels, genuinely and strongly, that it might have made a difference."

I think the most important point Professor Weiler has to make is the one we feel very strongly about, which is that it is the advisers to the Chairman of Management Board of Cabinet; it is the staff who, in effect, recommend to the minister changes or no changes in the legislation; it is these people whom we meet on a day-to-day basis, in terms of employer-employee relationships. They do not want to make life any more difficult for themselves than it is. Therefore, they do not want to recommend any changes, the changes we want which we think are legitimate changes.

Our position is very clear and must be reiterated. The notion of fairness is of some import in the process of arriving at policy decisions in those particular circumstances when legislator and employer are the same. So that our contention is not confused with exaggerated claims, let us be explicit in stating what we are not proposing. We do not argue that every policy or political decision of the cabinet ought to be made through a process consistent with the requirements of procedural fairness. Nor do we argue that, if such added scope as we suggest for the notion of fairness is admitted, the requirements are even remotely as strict as in the exercise of judicial or administrative authority.

We argue merely that when legislator and employer are the same, special considerations arise with respect to the designation of the minister who bears primary responsibility for decisions regarding the rules governing employer-employee relations.

We maintain that so long as the employer wears the same hat as the administrator of CECBA, then there is no advantage for the employer to amend CECBA in a way which would be fair to the union.

Why are crown employees an exception? In comparison with employees whose relations with their employer are governed by the Ontario Labour Relations Act, the employees of the Ontario government are at a decided disadvantage in their collective dealings with their employer.

The Crown Employees Collective Bargaining Act is the counterpart to the OLRA governing employer-employee relations between the crown and its employees. Particular attention should be paid to those provisions of CECBA which limit the scope of collective bargaining in a manner distinct from the OLRA.

Subsection 18(1) of CECBA reserves to the employer as its exclusive right the unfettered authority to determine such key aspects of the employee's working conditions as: complement (and hence, workload), work methods and procedures, kinds and location of

equipment (and hence, technological change), the classification of positions (thus precluding any form of joint job evaluation) and superannuation. Clearly the collective rights of crown employees are fewer than those enjoyed by other employees in their dealings with their various employers.

10:30 a.m.

Subsection 18(1) of CECBA reads as follows: "Every collective agreement shall be deemed to provide that it is the exclusive function of the employer to manage, which function, without limiting the generality of the foregoing, includes the right to determine,

"(a) employment, appointment, complement, organization, assignment, discipline, dismissal, suspension, work methods and procedures, kinds and locations of equipment and classification of positions; and

"(b) merit system, training and development, appraisal and superannuation, the governing principles of which are subject to review by the employer with the bargaining agent,

"and such matters will not be the subject of collective bargaining nor come within the jurisdiction of a board."

Some standard must be accepted for judging the fairness of the fewer collective rights permitted crown employees. There is an inherent attraction in relying on Rawls's first principle: In general, people should enjoy equal rights and a burden of proof falls on those who propose a departure from this norm to show that such departures are necessary for the common good.

What candidates present themselves for explanation of the inferior legal position of crown employees in their collective dealings with their employer? Does the prior policy decision to impose arbitration of unresolved disputes render it necessary to protect the crown as an employer from incursion by arbitrators into essential managerial functions? Do government operations have special characteristics that necessitate reserving certain unfettered functions to the employer? Or has the crown's narrow interests as employer entered into the policy-making process when the collective rights of crown employees were subjected to limitations not found elsewhere?

Let us consider first whether mandatory arbitration requires that certain functions be reserved exclusively to the employer and not come within the jurisdiction of an interest arbitration board. Perhaps it might be argued that some functions are essential to managing an operation and that any fetter may make management impossible. This suggests that where strikes and lockouts are permitted, management would prefer such industrial conflict to accepting fetters on these essential functions. Additionally, it might be argued that if acceptance by management of excessive union demands renders continued operation untenable, then the consequences are borne by the same private parties who entered into the unsound agreement and it is no business of the state to pre-empt such agreements.

Such reasoning suggests that an employer such as the crown which has been denied the normal employer right to endure a strike or impose a lockout in defence of essential managerial functions, must be protected from an ill-advised arbitrator introducing unreasonable fetters on vital managerial prerogatives. While in the private sector, the consequences of impairing management's ability to function would be limited to private parties, such is not the case if public services are undermined.

We respond to this attempt to justify the lesser collective rights of crown employees, not by arguing against the previous line of reasoning, but by showing that it could not be held by the government which enacted CECBA. In the first instance, the government clearly did not and does not regard the wide scope permitted to collective bargaining under the OLRA suitable only to private parties. The preponderance of public authorities has been placed under the OLRA and not under CECBA or similar legislation.

In the second instance, the government's Hospital Labour Disputes Arbitration Act which requires arbitration of unresolved interest disputes, does not restrict the scope of collective bargaining in the manner of CECBA. Indeed, no restrictions at all were introduced. The management of a hospital must appear before the bargaining table and an arbitrator without its supposed essential powers protected against incursion. One must conclude that the government itself could not have held that mandatory arbitration requires fewer collective rights for crown employees.

If mandatory arbitration does not warrant the restrictions found in subsection 18(1) of CECBA, then may it be argued that the Ontario government operations are different in some crucial respect from operations governed by the OLRA and that these differences justify the restrictions found in subsection 18(1). It is surely difficult to sustain such a view. Is a provincial highway maintained by the Ministry of Transportation and Communications so different from the major arteries maintained by local authorities that the employees of the Ministry of Transportation and Communications cannot be allowed to bargain the classification of positions or work load or types of equipment. Consider centres for the mentally handicapped. When these centres are transferred from the direct responsibility of the Ministry of Community and Social Services to a local authority, the collective rights of the employees are enhanced by that transfer.

Can it be argued that the essential character of the operation has changed? Certainly the government would deny this. Is a liquor store really so fundamentally different from a beer store that the employees of the former must enjoy fewer collective rights if the public welfare is to be served? It is surely difficult to find in the character of government operations a basis for discrimination that is held consistently, let alone persuasively.

How is it fair when the employer shields itself from the discipline of collective bargaining by statute? How was it fair when the union's proposal for a joint job evaluation system broadly similar to that in the basic steel industry was held to be in conflict with subsection 18(1) of CECBA, which reserves to the employer exclusive power over assigning positions to classifica-

tions? OPSEU has repeatedly recommended changes to CECBA. Among the changes we have proposed are amendments that would allow government employees to bargain the same sort of issues that their counterparts in the private sector can bargain: classifications, job evaluation, technological change, work methods and procedures and pension matters. At present, all these matters are exclusive employer rights.

The government, as an employer, has legislated for itself a privileged position that is not available to any other employer in Ontario. In resisting our proposals for parity with the private sector, we cannot but believe that the government's interests as an employer have influenced its response to us. Indeed, the only advice the Chairman of Management Board of Cabinet receives is advice from the very officials charged with conducting industrial relations on behalf of the government as an employer.

A set of rules which bar negotiations on these subjects and which even preclude their being the subject of an arbitration award are hardly likely to instil respect for the system's fairness or for an employer that exploits its advantage under this system.

One must conclude that the fewer collective bargaining rights permitted crown employees cannot be explained readily in terms of the public interest. The union cannot be regarded as unwarrantedly cynical in surmising that the fewer collective rights of our members are explained by virtue of the government legislating with an eye towards its narrow interests as an employer.

No confidence in this process: In his report, Paul Weiler notes:

"Of its very nature, labour-management relations involves the risk of occasional major conflicts. Ideally, the law which seeks to contain these confrontations should enjoy the general confidence of those who are governed by it. Thus, if it is possible to remove this appearance of unfairness in the process of administering and amending the CECBA in the eyes of OPSEU, one of the two major parties affected by the act, I should think that this step is well warranted."

A large measure of responsibility for industrial relations lies in the hands of the government. One of the purposes of labour legislation is to facilitate mutual problem-solving for both parties. However, the legislation that allows one party to unilaterally solve its problems at the expense of the other party, namely, through subsection 18(1) of CECBA, will never gain the confidence of OPSEU.

If labour legislation is to win union support, without which it cannot work effectively, it must be applied consistently to all jurisdictions and be seen to be applied consistently. OPSEU again asks: Why are crown employees the only group of workers denied certain bargaining rights that others enjoy? Why are we the exception?

Concerns about the change: Weiler notes that there are concerns about what a transfer of authority might signal. He responds:

"The union goes on to claim that the current ministerial responsibility has helped produce a CECBA which denies provincial government employees the advantage of the type of bargaining rights now enjoyed by other Ontario workers, whether private or public, who are governed by the Ontario Labour Relations Act. This is why OPSEU is emphatic that the responsibility for the CECBA should be taken from Management Board and given to the Ministry of Labour. I might add that this second line of argument by the union evokes concern among some of those who might be sympathetic to its first argument about the principle of the matter. It leaves these people somewhat leery about the signal that might be read into a transfer of authority to the Minister of Labour.

10:40 a.m.

"In my view, the judgement of the cabinet on this internal assignment of ministerial responsibility, whether to maintain or to change the current arrangement, should not turn on a judgement about what labour relations policies the CECBA should contain. As a practical matter, the key ingredients in this statute have been and will be settled collectively by the cabinet, irrespective of which minister has the responsibility of introducing future amendments into the Legislature.

"A rational judgement about these policy questions will be based on the characteristics of government employment itself, taking account of both resemblances to and differences from employees governed by the Labour Relations Act. Indeed, there is no single legal pattern for Ontario workers who are now governed by legislation within the purview of the Ministry of Labour, as is shown by the examples of public sector employees such as hospital workers and even private sector employees such as construction workers."

OPSEU earlier had addressed this issue in its March 1982 brief to the government, entitled Statutory Responsibility for the Crown Employees Collective Bargaining Act. I quote from that brief:

"Some might acknowledge the problem of crown employees where legislator and employer are the same but argue that cabinet government does not permit even partial remedy. That cabinets must be the masters of their procedures is a principle broadly accepted. However, to alter the assignment of ministerial responsibilities, as we have advocated, hardly offends against the cabinet's control over the manner in which it makes political decisions.

"More pointed is the argument that the supposed improvement we anticipate from a separation of ministerial responsibilities will be confounded by the overriding principle of cabinet solidarity. We acknowledge that the rules governing industrial relations between the crown and its employees are political decisions and, as such, are not solely within the scope of a single minister. However, the role of individual ministers is far from inconsequential. Ministers typically are the source of initiatives concerning the statutes assigned to their portfolios.

"We do not require a modern Bagehot to tell us that the various ministries come to be associated with certain outlooks and

that the counsel of their officials is pertinent to the policy-making process. Few, for example, would consider purely neutral a change in responsibility for the mentally handicapped from the Ministry of Community and Social Services to the Ministry of Correctional Services. Similarly, few would think it devoid of implications if responsibility for the rules governing industrial relations between the crown and its employees were transferred from the Chairman of Management Board to the Ministry of Labour.

"No certainty can be attached to any change. However, when the same minister is responsible for both the CECBA and the OLRA it is likely that the same general understanding, fairness, efficiency and stability will inform the drafting and amending of both sets of rules. Certainly it is the union's view that a more constructive dialogue will occur over the rules which govern industrial relations between the crown and its employees if the minister representing the government is not preoccupied with the demands of representing the crown as an employer."

In the interest of the public: The government has a conflicting range of interests in the collective bargaining process and in the industrial relations system. The government's overriding role in this field is as custodian of the public interest. Traditionally, the government's main role in collective bargaining has been to establish the reciprocal rights and responsibilities of labour and management vis-à-vis each other and the community. The government is also the only party capable of serving as a dispute settler between labour and management when they become embroiled in a confrontation.

In addition, we must consider the government's role in the collective bargaining process as one of the negotiating parties. This role compounds the difficulties governments have in trying to reconcile the many different levels of their involvement in the collective bargaining process and the industrial relations system.

In short, the government has so many different parts to play in collective bargaining and industrial relations that it sometimes can appear to be working at cross purposes. This is especially so when the government must try on the one hand to resolve a major dispute involving its employees while concerning itself on the other hand with the cost consequences of a settlement.

Where only one agency is involved, as both employer and the legal administrator, i.e., the Management Board of Cabinet, a bias towards cost saving could result in the unsatisfactory resolution of the dispute, eventually leading to a damaging and illegal work stoppage. This would certainly not be in the public interest nor, indeed, the union's.

However, where two agencies are involved, i.e., the Ministry of Labour as legislative administrator of the Crown Employees' Collective Bargaining Act, and the Management Board of Cabinet as employer, the interests of the public and the union would be better served. For example, where a major dispute involving government workers arose, the Ministry of Labour would be primarily interested in resolving the dispute. The Ministry of Labour would exert

pressure on the employer to improve the offer, thereby resolving the dispute and saving the public any hardship.

It is worth repeating the union's earlier arguments presented in the March 1982 brief to the cabinet:

"The public's interest in an industrial relations system is different from though not necessarily at odds with the interests of the actors in that system. An industrial relations system will not serve the public interest if it tends to accentuate and prolong disruptions rather than mitigate and contain them. Such instability may arise from the normal workings of ill-considered rules, or it may arise from the system's inability to appear fair to all the actors in the system. A system which is not viewed as fair will lose its legitimacy. Otherwise reconcilable differences will become the focus of ever-more-intense dispute. The system will acquire a perverse momentum of its own."

Our argument reflects our concern with the fewer collective bargaining rights enjoyed by our members and with the difficulties in resolving this problem posed by the present structure of ministerial responsibilities. Although we are a party to a system of employer-employee relations established by CECBA, we can comment on certain public interest aspects of the issues posed by this legislation. It is our view that the specifically public interest in the industrial relations system between the crown and its employees would be better served by the proposal we are making concerning ministerial responsibility.

Ministerial responsibility; other possibilities: There is the suggestion that to shift responsibility over to the Minister of Labour would send an unintended message and that another candidate should be found. Weiler writes:

"There is one significant concern about such a step. It has been suggested that the perspective of the Ministry of Labour is primarily formed by its experience in private-sector labour relations. CECBA now embodies some major differences from the private-sector model; most pointedly, regarding the use of arbitration instead of the strike as the mechanism for resolving deadlocks in negotiations. The concern is that this simple shift of responsibility for the CECBA to the Ministry of Labour will send an unintended message that these policies themselves are to be rethought. Thus, it was urged on me that another candidate should be found for this role."

Ministry of the Attorney General: Weiler continues:

"The examples of Alberta and Prince Edward Island would suggest the Attorney General as a likely candidate. I am dubious about the advisability of this for Ontario. As not-too-distant history has shown, the Attorney General must enforce the Crown Employees Collective Bargaining Act in a difficult crisis. Thus, if ministerial responsibility were to be transferred from Management Board to the Attorney General, the Ontario Public Service Employees Union would hardly see this as a response to its objections to the current arrangements."

We could put it more bluntly than he did, but the message would be the same: We do not want to go to the Ministry of the Attorney General. With such a choice, OPSEU would be concerned about the lack of a body of expertise within the Ministry of the Attorney General concerning industrial relations policy.

OPSEU has had only limited dealings with the Ministry of the Attorney General. We made the acquaintance of one of the senior crown prosecutors in the course of his performing his official functions. As long as the crown as an employer has recourse to injunctions and to their enforcement, it would be inappropriate to place responsibility for devising the rules of industrial relations with the Attorney General.

10:50 a.m.

Minister without Portfolio: Here Weiler writes:

"Another alternative suggested to me was the Minister without Portfolio. The latter would have the virtue of coming to this role without other ministerial duties and associations which one party or another might find troublesome in connection with the Crown Employees Collective Bargaining Act. If the government is especially concerned to underline the distinction between CECBA and the Labour Relations Act, this is the way to do it.

"I am somewhat hesitant positively to recommend this latter step because of its implications for the size and the makeup of the cabinet, which go far beyond the confines of my assignment. There is the further practical matter that selection of a minister to take charge of an important piece of legislation must carry with it the provision of experienced staff who can offer advice and assistance in this role. In the government of Ontario the relevant experience in labour relations is now located in Management Board and in the Ministry of Labour.

"If the decision is made to move the authority for CECBA itself from Management Board, the new minister responsible will have to rely on Labour ministry officials. Nor, I think, should one overemphasize the problem of philosophical perspective. The Minister of Labour has ample experience with the responsibility for public-sector bargaining: not just local government employees who are covered by the Labour Relations Act, but also hospital workers who are covered by the Hospital Labour Disputes Arbitration Act.

"Under the latter, just as under CECBA, it is binding arbitration rather than the strike which serves as the instrument to settle collective bargaining disputes. If the government were inclined to transfer responsibility for CECBA to the Minister of Labour rather than to a minister without portfolio, the example of the hospital workers should be sufficient to make clear that the reason for this step is solely the issue of principal canvassed in this report; not because of any tacit retreat from the industrial relations policies now contained in CECBA."

As we mentioned earlier, the one argument favouring designation of a Minister without Portfolio as responsible for CECBA is that such a minister would have few if any staff under his

authority. Thus, such a minister would not be as conscious of narrow employer interests in reviewing the rules which govern industrial relations between the crown and its employees. However, this advantage is achieved at the price of designating a minister with no day-to-day access to expert counsel on industrial relations.

Minister of Consumer and Commercial Relations: In its brief, Statutory Responsibility for the Crown Employees Collective Bargaining Act, March 1982, OPSEU raised and rejected one other possible alternative--the Ministry of Consumer and Commercial Relations:

"The initial attraction of the Ministry of Consumer and Commercial Relations lies in its role as rule maker for various economic activities involving parties with different interests. The major statutes for which this ministry is responsible indicate the nature of its mandate: the Corporations Act, the Securities Act, the Insurance Act, the Condominium Act, the Consumer Protection Act and the Pension Benefits Act. The context of such legislation is one in which the parties seek out one another for the purpose of a specified commercial transaction.

"The statutes under this ministry typically originate in the view that one of the parties to a commercial contract, whether written or verbal, is vulnerable to sharp practices. Fairness in the marketplace requires that certain commercial practices be regulated or suppressed and certain types of contracts meet particular tests before being enforceable. We believe that the problem of ensuring fairness in the marketplace is quite distinct from addressing the problems raised by industrial relations policy."

Arguments favouring the Minister of Labour: Weiler notes:

"An obvious candidate is the Minister of Labour. This portfolio now has charge of the Labour Relations Act, the major piece of labour legislation in the province. This minister must listen to employers and unions from every sector of the economy and must fairly appraise their respective views about the design of collective bargaining legislation in the province. Both the minister and his senior officials develop experience with and expertise in all facets of labour-management relations, private and public. In those other Canadian jurisdictions which have decided to assign authority over crown-employee legislation to a different minister than the one who acts on behalf of the crown at the bargaining table, the usual choice has been the Minister of Labour. This would seem the natural step for Ontario as well."

The Ministry of Labour is ideally suited to supervise labour legislation in this province, irrespective of jurisdiction. The ministry employs high calibre advisers who are intimately familiar with industrial relations and who have been notably successful in preserving a stable system of industrial relations in Ontario.

If the validity of separating the functions of administering CECBA from representing the crown as employer is admitted, then the arguments in support of assigning the responsibility for CECBA to the Ministry of Labour are three:

First, acceptance of the notion of fairness implies that policy governing rights should be broadly consistent between similar groups of persons. Industrial relations legislation determines and regulates the collective rights of employees. The collective rights accorded to crown employees should be viewed as an aspect of overall policy in the area of industrial relations. This bias towards parallelism in the rules governing employer-employee relations is best given an operational expression by placing CECBA and the OLRA under the same minister, that is, the Minister of Labour.

Second, the public interest in industrial relations policy is best served when the rules for the conduct of employer-employee relations are the product not only of careful but of informed dialogue. That the body of expertise with respect to the public interest in industrial relations resides in the Ministry of Labour is self-evident. Assignment of responsibility for CECBA does not ensure that the counsel of those acquainted professionally with the public interest in industrial relations will prevail, nor does it assume that such counsel is always sound. The process of cabinet government allows other views to be heard. However, assignment of CECBA to the Ministry of Labour does at least ensure that the professional counsel of its staff will be readily available and will be a more pronounced factor in determining the rules appropriate to employer-employee relations involving the crown and its employees.

Third, an even-handed labour policy is most likely to emerge if the Minister of Labour is responsible for administering all labour relations legislation. There is no reason why Management Board must retain responsibility.

Weiler states: "No one has suggested to me that there is any tangible positive reason why Management Board must retain this responsibility for the act. Any views which its officials have from their experience with the statute can readily be conveyed to cabinet by their minister. The current assignment can be altered by a simple order in council, with no need to open up the statute itself for amendment and debate. I recommend that this step be taken."

Changes needed:

Responsibility for administering CECBA and by implication the political responsibility for proposing to cabinet and to the Legislature such amendments as may be deemed in the public interest is not, in fact, assigned by the statute to any particular minister. Subclause 1(1)(j) provides only that, "'Minister' means the member of the executive council to whom administration of this act is assigned by the Lieutenant Governor in Council."

It is merely an order in council under the authority of the Executive Council Act designating the Chairman of Management Board as the responsible minister to which reference is made by subclause 1(1)(j) of CECBA. It should be noted that the assignment of ministerial responsibility for legislation can be readily changed. Thus, subsection 5(1) of the Executive Council Act provides that:

"Notwithstanding the Legislative Assembly Act, any of the powers and duties that have been heretofore or may be hereafter assigned by law to any minister of the crown may from time to time

by order in council be assigned and transferred either for a limited period or otherwise to any other minister by name or otherwise."

That is the end of that section of the brief and the case has been made in many other forums. It is with a certain sense of desperation that we make it in this forum, and we hope you will be able to relieve the frustration and get some action in this area. That is why we are here today, because we know you will use your influence to look at our position, to be swayed by it and then seek some action.

Mr. Chairman: I was wondering, Mr. O'Flynn, in order to give you a break, whether you would consider some questions at this time on the section you just completed? I think some members have some comments.

Mr. O'Flynn: Sure, absolutely.

11 a.m.

Mr. Breaugh: I wanted to interject here, because this is a long and rather complicated argument even though the principles are rather simple. The point that is being made here is a basic argument that people who work for the government should have the same rights as anybody else in our society, that they should not be bound by things which are fundamentally different in the current setup. The key to that is the way the bargaining act itself is administered and the kind of on-line responsibilities, so that when there is a problem these people in effect do not have an opportunity that everybody else has, and that is to go and get a third party or have another recourse. To get some redress, they are forced back through the same channels that probably caused the problem originally.

It seems to me, in reading Weiler's comments and the comments of the union and the studies that have been done in other jurisdictions, the consensus is pretty clear that this is a basic wrong. It should be corrected. I have not heard the other side of the argument yet but I imagine we will. I do not understand a rationale which would preserve the status quo and I am searching for a reason there has not been a response to this much earlier. Maybe Mr. O'Flynn could elaborate on that a little bit. What are the reasons there has been no change, because from a theoretical point of view, from an academic point of view, from the point of view of fairness, the change should have happened some time ago.

Mr. O'Flynn: It seems to me that nobody likes change, especially change that may cause more problems. If a private-sector employer had the opportunity to write his own legislation with regard to what rights the union or the employees would have, history has shown us what kind of legislation he would write. They do not want to make the change, and there is no voice within the government that is supporting our point of view. Certainly the officials in the Civil Service Commission do not want to let that out of their hands.

I suppose, from their point of view, who can blame them? Not from a fairness point of view, but from a territorial point of view, who can blame them? But it is not their decision to make. It should not be. It should be a decision that is not made from the point of

view of the Civil Service Commission or its advisers, the advisers to the Management Board. It should be one that is made on the basis of principle. We have stated it very clearly. We have had an impartial adviser appointed by the government who says, "Yes, let them go under the Ministry of Labour." We have knocked on doors saying, "Will you do it, please?" and they have said nothing.

Mr. Breaugh: One of the difficulties that I have with this is that I suppose the arguments are a little on the simplistic side. You are arguing for fairness, which is always a terrible argument to try to make, especially with the government. Governments are not particularly interested in being fair. If they have you at their advantage they probably want to retain that, and no amount of pleas for justice and mercy and fair play are ever going to succeed.

One of the problems that I see in it--you said it at the beginning of today's session--is that there is probably a limit to the amount of abuse that anybody is ever going to take and unless there is some movement to correct the situation and move to a system which is the same, in effect, as everybody else works under, you are now going to get to the point where there will be a reaction which takes away whatever advantage the government might have had.

I read into this, and it is a long and complicated piece of business for sure, but I read into this act a lot of things that the government now has which it would not get away with if it was somebody running an industry out there. The industry would operate under a different code. There are a lot of advantages, many of which are just simply unstated. You do not have rights to bargain for things that anybody else has a right to. There are grievance procedures that other people have access to that you do not, and I think that probably would be crass political analysis of the thing and it will come down as just that. If the government becomes convinced that you are not going to take it any more, they might just move to do for you what they have done for everybody else.

There was an eloquent argument made here and certainly a thorough one by Weiler and yourselves again this morning that to be sane about it, they ought to move to apply the same situation to civil servants and crown employees as they do to anybody else. But probably it will be that crass political decision which gets it to that point. I would be happy to recommend to the committee and I am sure that they would all, in fairness, support a recommendation that we adopt the recommendations of Mr. Weiler and the union this morning. But it may take more than that.

Do you want to elaborate a little bit on your earlier comments about what might happen from here on in?

Mr. O'Flynn: I have been president of the union now for four years and I have been re-elected to a third term which started this June. My personal philosophy is that I do not intend to sit by and allow a situation that is so grossly unfair as this to continue. I know that we do not have any power as a union and I recognize that. But we will just have to keep pressing on in every reasonable way to make our voice heard and that is why we are here this morning on this issue. We will continue using every reasonable means to get our point across.

Mr. Charlton: Let me jump in at this point on this issue of what happens without any changes and let us talk about some specific realities. If I recall correctly, the Crown Employees Collective Bargaining Act did not exist prior to 1972. Is that right?

Mr. O'Flynn: That is right.

Mr. Charlton: Give me your assessment of the labour relations problems, the eruptions, the disruptions, the public inconvenience and the public danger that was created over the 100 years that the civil service negotiated with the government without the existence of CECBA under the control of the commission and Management Board.

Mr. O'Flynn: There were not any.

Mr. Charlton: None.

Mr. O'Flynn: That is the short answer.

Mr. Charlton: On the other side of that coin, perhaps you can tell the committee about some of the things that have happened since 1972 and the frustrations that are evolving as a result of CECBA and the abuses which it implies.

Mr. O'Flynn: I suppose the organization that was a social club developed into the Civil Service Association of Ontario, then eventually, after CECBA was passed, it developed into a union. I would expect that the passing of CECBA had something to do with that development and evolution.

Since then, of course, we have had an illegal strike and it was over a very simple matter, and that was that the correctional officers wanted a category of their own. They had wanted this for, I suppose, years. They had ask for it and the union had asked for it and they had not been able to get it. Every answer they got was, "No, you cannot have it." Eventually, of course, it became a habit to say "No," because there were no consequences to saying "No." Every time we asked, and we asked regularly, the government said: "No, you cannot have your own category. It will lead to chaos. It is a destruction of the whole system." Eventually to say "no" did have consequences because it was said once too often.

So the correctional officers said, "It is unreasonable to deny us what we want." So they went on a illegal strike. I would say that did no good for the law or society in general. I say that I am completely frustrated with the lack of action on the part of the government with regard to our representations on these matters.

11:10 a.m.

Mr. Chairman: Would your recommendation or suggestion that there be a transfer of responsibility from the Chairman of Management Board to the Minister of Labour help in that situation?

Mr. O'Flynn: Yes, it would, indeed. In that situation it certainly would have helped because the advice that the Management

Board of Cabinet was getting came from its own advisers, that is, the Civil Service Commission.

Mr. Chairman: But you know that in reality there is at some stage, usually the final stage, collective consideration of matters relating to an organization such as yours when they get to the point of almost strike action.

Mr. O'Flynn: Yes.

Mr. Chairman: You have got the cabinet in the big picture at the end, and certainly the Minister of Labour in a situation like that, regardless of his direct responsibility, would be involved.

Mr. O'Flynn: Mr. Chairman, you know more about those things than I do and I recognize and respect that. However, I am sure it all depends on how an issue is presented to cabinet. The person who is giving the advice is not used to not having his own way.

Here was the union saying, "We want something and we are prepared to do something to get it," and, of course, the advice from its own officials was, "Do not give into these so-and-so's because if you do, there will be no end to what they are going to ask for next." So, in that context, it is bad and was seen to be bad by others outside.

I had discussions with people outside of the Civil Service Commission who were involved in industrial relations and they thought it was positively crazy to have an illegal strike over that issue, to let things go to that extent. What you have is you have a built-in wall around the Civil Service Commission which makes its own legislation and advises itself about the legislation. Such in-breeding is bad.

I say without hesitation that we would not have had that conflict--all you would have to do was read the report of the arbitrator in that matter. He said, and I have not got it with me but I remember this clearly, "Some of the arguments of the government did not have the weight of a feather." So that is how stupid the Civil Service Commission and its advisers were in that matter.

Mr. Breaugh: I wonder if I could ask you to give us an opinion on something I see happening in my own area and in other parts of the province to people who are working for the government. They seem to be growing up, so to speak. Having been in a union for some period of time now, they are involved in activities with other unions. They are mixing with those people and seeing how problems get resolved in the private sector and sometimes even in the public sector at different levels and they are asking themselves a very legitimate question: "If somebody who works for a municipality has access to that kind of a process, why don't we?" The cumulative result of that is that there is a good deal of frustration building which is going to get an outlet at some point of time.

A basic purpose of a number of things that are covered under the Labour Relations Act, for example, is to provide a vehicle which

will resolve a problem before it gets to a point that there is a big problem. So if there is a little grievance, there is a process to deal with the grievance. If it has to do with negotiating classifications of work, or hours of work, or what a person does, or the conditions under which they work, there are vehicles at the disposal of both management and labour to resolve a problem when it is a small problem, as opposed to just accepting the concept that if you ignore it, it will go away, or if you say no, that is the final answer.

I see a growing phenomenon, especially among people who work for the province of Ontario. and that frustration is building almost on a daily basis and when you add all of those frustrations up, at some point in time you will get recurrences of things which nobody wants to do, but because there are no other means at their disposal to resolve those problems, it happens. You may well see some version of what happened with the correctional officers again and with different employees. Would you say that is a reasonable assessment of what is happening?

Mr. O'Flynn: Let me make it very clear. It may be a good assessment, but I am not in favour of illegal strikes because I enjoy my own freedom. I am not anxious to let it go easily, or lightly.

Mr. Charlton: --being the leader than the fall guy.

Mr. O'Flynn: Yes. Either way, I do not like the prospect. Certainly, we are in the Canadian Labour Congress, that is the union is, and our members are members of the Ontario Federation of Labour, are members of the district labour councils; they are members of the Canadian Labour Congress and they go to their meetings, the educationals and, of course, the inequity of CECBA, which sounds like a disease, is all the time being brought home to them. I would say yes, eventually they will.

But that is not the context in which I am here. I think that the government or a party that has been in power for 40 years must have a way of making change from time to time. I say to them: "Now is the time to make some changes in this legislation. The time has come and, for heaven's sake, make it and do not force us, as a union, or me, as the president of it, to do things I do not want to do but which circumstances force me into doing if I am going to maintain my own self-respect as the president of the union." So that is the position we are in.

Mr. Chairman: Sort of halfway through the government's term of office, you figure that these changes should be made.

Mr. O'Flynn: Oh, sure.

Mr. Chairman: Before another 40 years go by.

Mr. O'Flynn: I think it would be ideal to make them yesterday.

Mr. Breaugh: Just to pursue the point I was trying to make there with a different union, in a different situation. In my area,

we had some hospital workers who went on a strike. Mine is a union town. Whether people are pro-union or anti-union, they do understand how a union works, they do understand the process; they understand that people can withdraw their services, and have done so in the past and will do so in the future.

The whole context of the thing is understood. It so quickly became such a ridiculous situation with involvement of the police, which they would not do in any other labour situation of that kind--in fact, it was not even local police. The investigation, by and large, was conducted from newspaper photos and the local member got questioned by the Ontario Provincial Police, all for doing things which, in my town, are normal to us. If there is a stalemate reached, there will often be a strike.

It does not seem to matter whether anybody else cares about it; if that process has to happen--and nobody ever wants it to happen--it is going to happen. The world will not end. There is no need to call in the riot squad, or to have a big investigation, or anything else. All of those things have happened at one time or another in Oshawa. We all just live through them.

Mr. Chairman: Do you realize, Michael, that if I were the Speaker I would be banging my gavel here.

Mr. Breaugh: I know you would do that but you are not the Speaker.

But that, essentially, is the problem that I see forthcoming with you, too. If there is not a sensible and rational resolution of this problem, we are all going to be in a situation where none of us, if we ever sat down, would say, "This is the sane thing to do." But it is going to happen because there is almost a force that invades that labour situation and takes it in such a direction.

I am sure the Attorney General of Ontario did not want to run around and investigate that kind of a labour dispute, the police officers who were involved do not want to be involved in that because it is not a criminal offence; it is a labour matter. The hospital workers were not happy; the hospitals were not happy; the people of Oshawa were not happy. Nobody was happy. Afterwards, when you all sat down and said, "Why did we get into this mess?" it was because we did not have a sane and rational process at work. We all knew that and nobody had ever done anything about it.

Mr. Chairman: Yes, but the hospital workers, under their own legislation--which is under the Minister of Labour, is it not?

Mr. O'Flynn: Yes.

Mr. Chairman: The suggestion of Mr. O'Flynn to transfer the responsibility from one ministry to another will not necessarily improve or overcome that situation.

Mr. Breaugh: But it would, on a day-by-day basis, give members of this union something which everybody else has got. For example, from my own area, when people who are members of OPSEU talk to people who are members of the United Automobile Workers, there is

night and day between the two. Although we sometimes might comment that the grievance procedure used by the UAW is one which is exercised pretty regularly and sometimes over what seem to be small matters, the purpose of the exercise is that it provides an ongoing vehicle whereby labour and management can resolve problems in the work place. And it works. For the life of me I cannot fathom why we have not seen this change so far.

11:20 a.m.

Mr. Charlton: It is important that we add a couple of things to what Mike has just said. He made the point that for the Canadian Union of Public Employees and the hospitals, all things are not a bowl of roses. That may be true. What exists in that situation which does not exist for OPSEU is some flexibility in terms of a vehicle to work towards remedies, simply because of the lack of the conflict of interest that exists in OPSEU's situation.

On Mike's point about the inevitability of those kinds of things happening, it is fair to say in the case of hospital strike, for all intents and purposes the leadership of that union lost control of what was happening. They lost control in the sense that they were not recommending a strike to their members. It was the frustrations and levels of frustration which the members reached which brought on that strike. Those kinds of things become inevitable because of the unreasonableness of the system in which they are forced to exist.

Mr. Chairman: Any other questions from any other members of the committee? Mr. O'Flynn, do you want to carry on?

Mr. O'Flynn: Mr. Chairman, I suppose the next section of the brief is of central importance to this committee in that we see a lot of problems with our relationship with the employer. We see that there is not enough control by the commission of the various ministries. This is a good example of the problems we meet in that area. I will read the text and then we will go into the details, as soon as we finish that.

Unclassified staff: The union continues to be concerned by the inequities that arise from the present system of allocating all seasonal, part-time, temporary and casual employees to the unclassified service.

According to the definitions in subsection 5(1) of regulation 749 under the Public Service Act, there are supposed to be two kinds of unclassified employees:

Group 1, consisting of employees who are employed under individual contracts in which the terms of employment are set out and who are employed:

(a) on a project of a nonrecurring kind;

(b) in a professional or other special capacity;

(c) on a temporary work assignment arranged by the commission in accordance with its program for providing temporary help;

(d) for 24 hours or less during a week; or

(e) during their regular school, college or university vacation period or under a co-operative educational training program.

Group 2, consisting of employees employed on a project of a seasonal or recurring kind that does not require the employees to be employed on a full-time year round basis.

OPSEU represents, for the most part, group 2 employees only. Clause 1(1)(f) of CECBA defines "employee" but excludes: a student employed during the student's regular vacation period or on a co-operative educational training program; a person not ordinarily required to work more than one third of the normal period for persons performing similar work except where the person works on a regular and continuing basis; a person engaged under contract in a professional or other special capacity, or for a project of a nonrecurring kind, or on a temporary work assignment arranged by the Civil Service Commission in accordance with the program providing temporary help.

OPSEU has two concerns. The first relates to the shabby treatment of the approximately 8,500 unclassified employees whom we represent. The bulk of these people are part-time employees or employees working on jobs which are seasonal in nature. Many of these workers have been in the employ of the Ontario government for a great many years. Many work a full year, or virtually a full year.

Indeed, it has been the practice in some ministries to arrange for mandatory layoffs of a few weeks each year, just so the fiction can be maintained that specific employees are indeed seasonal employees. A personnel file in the Ministry of Transportation and Communications states bluntly that a certain worker was laid off, not because of a lack of work but to provide a break in service. This is a common practice.

The unclassified service has been the method whereby the various ministries cheat on the complement control exercised by the Civil Service Commission. Top commission officials will explain that the ministries do not have to provide the maximum salary accountability for unclassified employees as they are required to do for full-time civil servants.

The use of unclassified employees allows ministry officials to escape political control. To the union, the use of unclassified employees also allows the employer to escape the basic provisions of the collective agreement.

Two years ago, OPSEU conducted a study regarding the plight of its unclassified members and found case after case where the employer was cutting corners on both the rights of employees and the few benefits to which they were entitled. We have boxes full of membership responses to questions and documentary evidence.

There is no reason why employees whose employment is recurring--i.e., who work for a number of months, are laid off and are regularly rehired--should not enjoy a continuing employment relationship and the benefits that go with it.

Moreover, we find that many group 2 employees are terminated simply in order to conform with the requirement that they not work on a full-time basis, whereas in reality there is an ongoing requirement to perform the work. The job, in fact, is full-time, but supervisors get around restrictions on complement by hiring a succession of unclassified employees and terminating them in order to maintain the fiction that the work is not full-time.

Many unclassified employees represented by OPSEU are outraged when they are terminated for no good reason and someone else is immediately hired to perform the same work. They file grievances over their terminations but the government, which has conveniently relegated them to the unclassified service, falls back on section 9 of the Public Service Act, shrugs its shoulders, and denies the grievance because the employee was hired only for a "specified period."

This is rapidly becoming a serious problem between OPSEU and the employer. Unclassified employees who pay dues and are entitled to protection by the union are no longer content to be laid off from jobs which are, in reality, full-time. Nor is OPSEU prepared to tolerate a system whereby the employer avoids dealing with justified grievances by falling back on legislation.

The lack of ability of unclassified employees to protect themselves from unjust dismissal applies equally to employees who suffer from what normally would be characterized as improper layoff or improper recall. The circumstances surrounding the termination last year of Mrs. Mary-Jane Stacey, a former employee at the Niagara Detention Centre, illustrates the point. A memo from the frustrated staff representative who was servicing the Niagara Detention Centre local provides a full explanation of the situation:

"This case is typical of what occurs with part-time unclassified employees. In most cases no grievances are filed because the employees and the union are aware that no remedy is available to counteract this injustice through the grievance procedure. This grievance was filed for the express purpose of getting the issue on the record so that it can be dealt with in bargaining.

"The facts are as follows: Mary-Jane Stacey is a qualified registered nurse licensed to practise in Ontario. She was employed on a part-time, casual basis by the Niagara Detention Centre. She had been employed through a succession of contracts, one of three months, one of six months and one of a year in duration. Never had there been a complaint about the quality of her performance. In fact, at the step 2 meeting, the superintendent of the detention centre agreed during questioning that there was no dissatisfaction with her performance.

"Two additional casual nurses were hired approximately three months prior to the conclusion of Mrs. Stacey's final contract. She assisted in orienting these individuals to the work routine at the detention centre.

"Mrs. Stacey was given the required one-week notice that her contract would not be renewed. The two new unclassified employees

are carrying on performing the work previously performed by Mrs. Stacey.

"At the step 2 hearing both the superintendent and the corrections personnel staff were very glib about their right to change unclassified staff as they see fit....

"Since recent arbitration awards make it obvious that no reasonable redress is available through the grievance procedure, we will not be proceeding to arbitration with this grievance.

"I trust that the information provided is sufficient to allow you to raise this injustice during your discussions with the Civil Service Commission."

I might say that we have raised that ad nauseam with the Civil Service Commission and we will get into that later.

The problem of termination constitutes the terror of the seasonal employee. Workers who year after year have performed necessary work for the Ontario government can and do find themselves simply not recalled to the job while some other new employee performs the work they have performed for several years.

11:30 a.m.

Mr. Chairman: Pardon me, Mr. O'Flynn. This may be rather a naive question but in a situation like that, I was just wondering, when Mrs. Stacey entered into a contract I would assume that it was a written contract. Could she not insist on certain conditions regarding termination or notice?

Mr. O'Flynn: You cannot. "Contract" is a misnomer, in reality; it is a letter.

Mr. Chairman: She just signs and sends it--

Mr. O'Flynn: If you want a job, sign it; if you do not want it, do not. I have met many people in my travels throughout the province at various meetings, formal and informal, with unclassified people. They say to me continually, "Do not bring up my name," because if they raise any noise they are gone, the contract is ended and they have no recourse whatsoever. We have brought some up to the commission. I want to make it clear that I am not attacking the personnel of the Civil Service Commission. I am not doing that. It is the system they run that I am attacking. We have brought up many, some in confidence with the commission and they have kept that confidence.

In general people say to me or say to Andy and he has had many instances like it, "Do not use my name." I remember I was up north somewhere at a meeting and was sitting down having supper with a lot of members. The woman beside me was on a contract. Her husband was on the other side of the table and he was on a contract. He was telling me that he went in to the superintendent, he had a complaint about his shift schedule and the superintendent said, "I will have the assistant super discuss it with you." The assistant super went

to him and discussed it with him all right. He said, "If you don't like it, you go elsewhere." That was the discussion.

Mr. Chairman: Or words to that effect.

Mr. O'Flynn: That is right, probably worse, but that is the situation that exists. There is no recourse whatsoever.

The problem of termination constitutes the terror of the seasonal employee. Workers who year after year have performed necessary work for the government can and do find themselves simply not recalled to the job, while some other new employee performs the work they have performed for several years.

Other horror stories include:

An unclassified employee working at a training school 40 hours a week was assaulted by a ward, an inmate. She complained to the police of this assault. Her contract was not renewed.

The Ministry of Culture and Recreation issued new contracts to a number of unclassified employees which unilaterally excluded them from the bargaining unit. These employees, who either had to sign the contract or be out of a job, were informed that, because they no longer belonged to the bargaining unit, they would not be receiving the raise just negotiated for their classification.

A contract employee worked in an office in London for a full 36 1/2 hours a week for a full three years. The employer decided to fill the position with a complement civil servant and posted the job. The posting was a restricted posting, thus denying the unclassified employee the right even to apply for the job she had been performing for three years.

As stated earlier, OPSEU conducted a survey of unclassified staff. The result was a multitude of horror stories involving just about every ministry and most parts of the province. These are injustices that no union, indeed no humanitarian, can leave unredressed.

There is no comparable legislation under the Ontario Labour Relations Act and the union maintains that such subclauses as 1(1)(f)(v) to (vii) of CECBA and paragraph 2 of section 5(1) of the Public Service Act regulations should be deleted. Since the Ontario Hydro Employees Union can even bargain for students and part-timers, as well as protect them, OPSEU sees no reason that it should be denied these same rights.

This would mean accepting the principle that the classified service could contain seasonal or part-time employees whose employment will be recurring, or where there is an ongoing requirement to perform the work. It would eliminate the disruption of service caused by needlessly replacing employees when their projected term of employment expires, and it would give such employees an outlet to vent their frustration through the grievance procedure when they believe they have been improperly terminated.

It might be appropriate for Andy to make some points on this

because, along with me, Andy has been at a number of forums where this issue has been addressed. I will start off by saying we have raised this matter for some years. In the last set of negotiations for the current contract we arranged things so that this issue would be a priority item. We had discussed the matter at great length with the Civil Service Commission.

Perception, of course, can be different for different groups or different people. Our perception before we left this was that we would get to the formal bargaining process, we would get prorated rights for those who are part-time on a regular basis, those who are seasonal workers--for nine months in many cases--permanent seasonal, these two categories. That was our understanding. I lay no charges of bad conduct on the part of the Civil Service Commission. However, when we got to the bargaining table, we found we got nothing. In fact, the first offer was to take away some of the rights that we had for the unclassified workers. Nothing of any substance came forward in the negotiations.

This goes back, in the union's opinion, to the problem that exists between the commission and the ministries. There is no central co-ordinating body that has power. The Civil Service Commission does not have controlling power over those ministries. What had been seen as an issue that had to be addressed by the commission was blocked by the ministries. That is our estimation. Perhaps you would like to fill out the details, Andy.

Mr. Todd: Mr. Chairman and members of the committee, the point that I want to make has to do with this business of the Civil Service Commission and its role in dealing with the union on a unified basis. We are not arguing against ourselves when we say that moving to the Ministry of Labour will not remove the need for employer representation of this kind and, in fact, probably the Civil Service Commission would continue. If it does not, there will be some other body put into place to perform the same role.

On the union side, OPSEU is the exclusive bargaining agent for all the people in the public service, and that is a large group, probably the largest single bargaining unit in Ontario, with over 55,000 employees in it, legally bound under the act to provide fair representation. Through internal processes, which we do not need to describe here, the union is able to arrive at policy decisions and communicate them to the employer.

On the employer's side you have a diffused picture because, technically speaking, the employer of these employees is the crown in right of Ontario. Everybody knows there is no such individual person, unless you consider that to be the Queen and she does not get involved in negotiations. So it devolves on Management Board of Cabinet. On a day-to-day basis, Management Board does not deal with labour relations. Maybe they should, but they do not.

11:40 a.m.

What happens is that the Civil Service Commission and the staff relations department function in that way on a day-to-day basis under the general supervision of the Chairman of the Management Board of Cabinet. Where we see the problem arising is in

the relationship between the Civil Service Commission and the ministries.

We certainly recognize the need for local and ministry discussion and resolution of matters which are relevant at that level, but what we want to see when we come before the "employer" is that the position which we put forward is heard, understood and where there is agreement it is acted upon in a consistent fashion. The problem we see is that although there is one bargaining unit and one certification, there is not, in practice, one employer. The ministries function, in many respects, as though they were 22, or whatever the current number is, autonomous employers. Using this example of the unclassified staff to demonstrate the general problem, we had lengthy discussions about how to resolve these problems that Mr. O'Flynn has mentioned in regard to the unclassified staff.

The chairman of the Civil Service Commission told us that the employer had the political will to make the changes that were required. Why did he use the word "political"? And he meant that in the broad sense, I believe. Because I think he recognized that he needed the political will to enforce the employer's decision on the ministries, bearing in mind that each of them is headed by a cabinet minister, and it was not in the interests of the ministries to accept the union's proposition that control and orderly systems should be exercised over the hiring and the employment rights of the unclassified staff. Therefore, the decisions of the central figure of the employer on the ministries was not well received, to say the least, and in the event, as Mr. O'Flynn has explained, when we arrived at negotiations, no proposal of any merit was made at the bargaining table to try to rectify this problem.

The point we make is that is directly traceable to the fact that the Civil Service Commission, although representing the employer as the central agency representative, does not exercise binding power over the ministries, even on issues where they agree with the union that something should be done. So in this example, the political will that the chairman spoke of could not be, I think, but in any event was not, exercised. This problem of the unclassified staff should be fairly easy to resolve, because we are talking here about a group that has been around for a long time and over which we technically exercise collective bargaining rights. Where there are significant defects in those rights, they are not being rectified.

So the argument we make to this committee, because it is interested in how the Civil Service Commission operates, is that there needs to be some kind of change for that group, or any other group which is put into place, to represent the employer, to speak with one voice and to be able to implement, by whatever means it sees fit, decisions where it agrees with the union that something should be done.

Earlier on we talked about the problem of convincing the employer to do something and our inability to cause that to happen. Here we are talking about issues where we have convinced the employer that change should be made, but the constituent parts of the employer said, "No, we do not want to make those changes," and

the commission appears--anyway in our view and on this issue--to be powerless to impose its stated intent to have political will imposed on the ministries.

We do not have a specific suggestion to make to you because it is an internal matter for the commission and those who control it to decide how that is to be brought about. But our specific proposal is that, in dealing with the union at the central level, there be a group in position and in power to make changes, where changes are agreed to with the union, and which will be binding on the ministries that are affected by whatever that particular problem may be.

In this case, you have a natural reluctance on the part of the ministries to make changes in the unclassified staff, because this represents a large pool of labour that they control and that are not subject to the hiring practices the Civil Service Commission puts into place on behalf of full-time civil servants. So a great number of anomalies can and do crop up and, naturally, the ministries are very reluctant to give up any control over the unclassified staff, because they use them and do not officially count them in the complement control features the government has put into place. They still get the job done, but they do not count the people in the unclassified staff in the same way that they count people in the classified service.

Even where we have been able to get the employer in the ministry to agree that a particular position is really a full-time classified civil servant position and the incumbent should be reclassified and have his or her status changed, the answer is: "Yes, we recognize that is so. We recognize we should do it, but we have to have Management Board approval for the money to change that employee's status and we cannot get that. So the employee is going to stay in place as an unclassified staff person and no change can be made."

Using those specific examples, we make the general proposition that the Civil Service Commission, or such other body as may be set up to handle the same function when the move to the Ministry of Labour is effected, should have the power to bind the ministries on those issues upon which the parties come to an agreement at the central level.

Mr. O'Flynn: Continuing on with the GO Temp services: OPSEU's other main concern over unclassified employees relates to the vast pool of so-called temporary office help known as the "GO Temp" services. The original concept of GO Temp was of a pool of clerical and stenographic help for temporary office absences and overload due to such factors as sickness, vacations, pregnancy leaves, etc. OPSEU has consistently opposed the blanket exclusion of such employees from collective bargaining, an exclusion which is found in subclause 1(1)(f)(vii) of the CECBA.

This exclusion allows the government to pay such employees substandard wage rates, deny them the benefits won for other employees through collective bargaining, and refuse them the right to grieve unfair treatment. We know of no other employer in either the public or private sector who, while obliged to recognize the

basic principle of collective bargaining, is allowed to operate with such a vast army of non-union temporary staff whom it can treat as second-class employees. In other jurisdictions, all workers, whether full-time or temporary, have the legal right to organize and bargain with their employer.

Moreover, many GO Temp employees are indistinguishable in terms of working conditions from the thousands of casual and temporary unclassified employees whom OPSEU does represent. It is only the label "GO Temp," applied by an employer who also invents the rules of the game, that sets these employees apart from others and discriminates against them so unfairly.

We have also been shocked to learn about the abuse of the GO Temp system by certain government ministries. For example, the Ministry of Health has used the GO Temp system to provide itself with full-time ambulance officers and psychiatric nursing assistants--a far cry from the original concept of temporary office help. Such techniques, used to escape the obligation under the law to bargain in good faith and to evade the application of the collective agreement, are worthy of sweatshop operators, not of the government of Ontario.

Probationary period: In close to 100 per cent of the unionized work places across Canada, the probationary period for an employee in a new job is three months in duration. OPSEU believes this to be the case in the majority of unorganized work places as well. However, the Ontario government has a probationary period which is normally a year. We say "normally" because subsection 6(2) of the Public Service Act states that, "The commission shall appoint the person nominated under subsection 1 to the probationary staff of the unclassified service for not more than one year at a time." This section gives the employer the right to unilaterally extend an employee's probationary period for as long as it wishes.

11:50 a.m.

While this issue has always irritated the union and its members, it has become a more serious concern recently as the backlog of grievances has been cleared. We have found an increasing reliance by the employer on its right under subsection 22(5) of the Public Service Act to release employees from employment for failure to meet the requirements of the position during the first year of employment, that is, during the probationary period.

We have sought redress through the grievance procedure and have been required to overcome the employer's preliminary objection that the grievance settlement board has no jurisdiction to consider grievances arising out of release from employment under subsection 22(5).

To successfully overcome this objection, we must be able to show that the employer is disguising a dismissal for cause as a release. As the employer has increased its reliance on this technique to escape the grievance procedure, it has become increasingly difficult to prove that releases under subsection 22(5) are, indeed, dismissals for cause. It is upsetting to us that the majority of the releases under subsection 22(5) that are referred to

grievance are those which occur during the last month of a one-year probation period.

Some argument may be made that the employer requires a lengthy probation period for its professional employees and employees who normally exercise a great deal of discretion. But there is no reason why the employer requires any more than three months to assess adequately the manual workers, office workers, tradespeople and institutional workers who make up the vast bulk of the public service bargaining unit. Unless the law is amended to remove the probationary period from the Public Service Act, bargaining cannot occur to achieve a sensible arrangement that provides both justice to the employees and a fair and reasonable opportunity to the employer to assess the adequacy of new staff.

Mr. Breaugh: Can I just stop you there for a second and ask if you are able to provide us with any concept of the numbers that are involved here? How many people under these classifications are employed by the government of Ontario at any one time?

Mr. O'Flynn: With regard to which?

Mr. Breaugh: GO Temp, unclassified and probationary.

Mr. O'Flynn: Unclassified goes very high from time to time. Depending on the situation, it can go from between 7,000 to 14,000 or 15,000 in the summer. We have an estimate of about 3,500 for GO Temp. Of course, we have no way of calculating the numbers on probation. Our main concern there, of course, is with the length of the probation period. We are saying it is far too long. They do not need someone who is employed in some task that does not deserve a great deal of skill, around for a year to find out if they want them on the books as a permanent employee.

Mr. Lane: Supplementary, Mr. Chairman: I would assume that the Ministry of Natural Resources is probably one of the greatest offenders in casual employment because of the nature of the work, such as fire fighting, manning the parks and doing the various things in the summertime that do not happen in the winter.

Mr. O'Flynn: Yes. We must make our case clear. We are not saying that these people should be permanently employed. We are not saying that at all. We are saying, in the cases you have mentioned--except for the fires, which are irregular--the park work is certainly regular and is ongoing from year to year. I met one person up north who had been doing the same work year after year for over 20 years. We are saying that these people have no security of employment, although the work is ongoing year after year. This man is quite content to be called back every year, whether or not he would like to have security of employment for those nine months of the year that he is working every year. He would like not to be able to be dismissed on a whim, which is his present situation, because all he is required to be given is a week's notice. So if he says, "Boo" to the boss, he is gone. It is as simple as that.

Mr. Lane: Most of them are rehired. In my area, anyway, I do not see very many changes.

Mr. O'Flynn: Well, we hear about the exceptions, you understand. We hear about the cases where a person has had some intestinal fortitude and has said, "Boo" to the employer or to the supervisor, and has been not rehired. Or take the case of persons who get ill. If they had permanency of employment they would be covered during that illness; they are not covered in their status as unclassified. So that is the kind of thing we are seeking to have changed.

Mr. Breaugh: You do not have a basic argument with the original concepts that are involved here, do you?

Mr. O'Flynn: No, we do not have a basic argument--

Mr. Breaugh: For example, you are not arguing that the government of Ontario should not have some kind of temporary services available.

Mr. O'Flynn: Not at all. We see no difference between the United Auto Workers or General Motors, which lays off a couple of thousand people when they are going to have a retooling. We see no difference with the government. The government hires people and it has to lay them off. We do not have any argument against that process. If the parks are used in the summer and they are not used in the winter, we do not expect the government to keep people employed in the parks during the winter.

Mr. Breaugh: But the basic problem you are trying to put forward is that in these three areas they have gone beyond the original concept of trying to establish whether somebody is satisfactory for the performance of any particular job. In fact, what you are trying to point out here, and I thought you said earlier that you had a bit of consensus on it too, is that there is some abuse involved in this, that they are hiding permanent positions under these three classifications.

Mr. O'Flynn: Absolutely.

Mr. Breaugh: Did I understand you correctly that the commission, at least in some degree, understands this and is prepared to agree that this is the case, but the ministries do not want to acknowledge it?

Mr. O'Flynn: Absolutely.

Mr. Breaugh: And nobody can do anything about it?

Mr. O'Flynn: We were led a merry dance through this whole problem. We went to the bargaining table, and we did not get any satisfaction there, and under the legislation we went to compulsory arbitration. However, the government took us before the tribunal and asked the tribunal to rule that this matter, prorated benefits for the unclassified, was not negotiable, and the tribunal came down with a ruling that said it is okay. The government took us back to the tribunal and had the tribunal have the union put before them each clause of our contract and how it would be affected by prorating the benefits for the unclassified. That has to be put before the tribunal.

In the meantime, the arbitration hearing is going on and, in the meantime, the interim award comes out, and we are still fighting the employer at the tribunal for the second time around, trying to get satisfaction for the unclassified. It ends up with the tribunal ruling a second time that it was negotiable and therefore arbitrable. So some time next month when the arbitrator gets around to it he will make a ruling on the issue of the unclassified workers. That is the grind and the toil we have had to try to get some satisfaction for the unclassified.

Mr. Lane: I guess the point I was trying to make is that generally there will be certain situations that really cannot be helped very much. For example, up north we have to remove snow, so the Ministry of Transportation and Communications has winter employees whom they cannot keep in the summer, because the paved roads do not really need the maintenance.

Mr. O'Flynn: We recognize that and we accept that. We have had all of those kinds of discussions recognizing that we accepted it.

Mr. Lane: I appreciate that. Thank you.

12 noon

Mr. O'Flynn: The next item is freedom of political activity.

The Ontario Public Service Employees Union has two major concerns with respect to political rights: First is the prohibition against the union for openly supporting a political party; second is the prohibition of civil servants from actively participating in an election other than by voting.

Prohibition to the union: Clause 25(2)(a) of the Crown Employees Collective Bargaining Act states bluntly:

"Where the tribunal upon application thereto by the employer or any employee concerned determines that an employee organization would not, if it were applying for representation rights in respect of a bargaining unit, be granted such rights by the tribunal by reason of failure to qualify under clause 1(1)(g)...the tribunal shall declare that the employee organization no longer represents the employees in the bargaining unit."

Clause 1(1)(g) reads:

"'employee organization' means an organization of employees formed for the purpose of regulating relations between the employer and employees under this act, but does not include such an organization of employees that,

"(i) receives from any of its members who are employees any money for activities carried on by or on behalf of any political party,

"(ii) handles or pays in its own name on behalf of members who

are employees any money for activities carried on by or on behalf of any political party,

"(iii) requires as a condition of membership therein the payment by any of its members who are employees of any money for activities carried on by or on behalf of any political party,

"(iv) supports or requires its members who are employees otherwise to support any political party."

The above-cited clauses allow an employer or an employee to apply to the tribunal to have representation rights terminated if the union fails to qualify pursuant to the criteria established by clause 1(1)(g). OPSEU objects strenuously to the presence of such legislation and regards subclauses (i) to (iv) as an interference by the employer with the freedom of government employees to take political action through their chosen bargaining agent.

It is curious but not surprising in the context of second-class citizenship that government employees coming under the Ontario Labour Relations Act do not have similar restrictions placed on their choice of employee organization. Ontario Hydro employees, for instance, work for a crown agency that comes not under CECBA but under the Ontario Labour Relations Act. They belong to the Canadian Union of Public Employees, CUPE, which has a history of supporting a political party. Also, members of CUPE are employees of the Workmen's Compensation Board, who come under CECBA. But since CECBA bars political activity by a bargaining agent, the WCB employees were able to gain certification only by asserting and maintaining the legal fiction that their union does not in fact support a political party. In this case it is more than evident that the law is an ass.

Whether honoured in the breach or in the observance, this restriction is an intolerable interference with the freedom of government employees to take political action through their chosen bargaining agent if they so wish. OPSEU therefore calls once again for the elimination from CECBA of subclauses (i) to (iv) of clause 1(1)(g) and clause (a) of subsection 25(2).

Prohibition of political action for civil servants.

In the previous section we condemned the way in which CECBA prevents public servants from taking political action through their chosen bargaining agent if they so wish. We would be derelict in our duty if we did not also publicly denounce the muzzling of individual civil servants, which is explicit in sections 11 to 16 of the Public Service Act and is rendered non-negotiable by section 14 of CECBA.

An analysis of the restrictions on the political activity of public servants in the 10 provinces and the federal government shows that Ontario has by far the most comprehensive and repressive prohibitions in all of Canada.

Here is a brief summary of the restrictions which make Ontario government employees second-class citizens when it comes to political activity:

Section 11 of the Public Service Act says that crown employees may be candidates in a municipal election, as long as they are not sponsored by a political party, and as long as there is no conflict between their work and the interests of the crown, whatever they may be. However, the government can wipe out this right for anyone it chooses simply by passing a regulation to that effect. The section reads:

"A crown employee, other than a deputy minister or any other crown employee in a position or classification designated in the regulations, may be a candidate for election to any elective municipal office, including a member or trustee or an elementary or secondary school board or a trustee of an improvement district, or may serve in such office or actively work in support of a candidate for such office if,

"(a) the candidacy, service or activity does not interfere with the performance of his duties as a crown employee;

"(b) the candidacy, service or activity does not conflict with the interests of the crown; and

"(c) the candidacy, service or activity is not in affiliation with or sponsored by a provincial or federal political party."

Section 12 forbids crown employees to run for provincial or federal elective office, or even to canvass or solicit funds for a candidate, unless they themselves have obtained leave of absence to run for office. Again, the government can, by regulation, refuse leave of absence. It reads:

"12.(1) Except during a leave of absence granted under subsection 2, a crown employee shall not,

"(a) be a candidate in a provincial or federal election or serve as an elected representative in the Legislature of any province or in the Parliament of Canada;

"(b) solicit funds for a provincial or federal political party or candidate; or

"(c) associate his position in the service of the crown with any political activity.

"(2) Any crown employee, other than a deputy minister or any other crown employee in a position or classification designated in the regulations under clause 29(1)(u), who proposes to become a candidate in a provincial or federal election shall apply through his minister to the Lieutenant Governor in Council for leave of absence without pay for a period,

"(a) not longer than that commencing on the day on which the writ for the election is issued and ending on polling day; and

"(b) not shorter than that commencing on the day provided by statute for the nomination of candidates and ending on polling day,

"and every such application shall be granted.

"(3) Where a crown employee who is a candidate in a provincial or federal election is elected, he shall forthwith resign his position as a crown employee.

"(4) Where a crown employee who has resigned under subsection 3,

"(a) ceases to be an elected political representative within five years of the resignation; and

"(b) applies for reappointment to his former position or to another position in the service of the crown for which he is qualified within three months of ceasing to be an elected political representative,

"he shall be reappointed to the position upon its next becoming vacant.

"(5) Where a crown employee has been granted leave of absence under subsection 2 and was not elected, or resigned his position under subsection 3 and was reappointed under subsection 4, the period of the leave of absence or resignation shall not be computed in determining the length of his service for any purpose, and the service before and after such period shall be deemed to be continuous for all purposes."

Mr. Chairman: There is one bit I do not understand. On page 43, under paragraph 105, you say it says in the last sentence: "Again, the government can, by regulation, refuse leave of absence." Subsection 12(2) reads that it shall not refuse leave of absence.

Mr. Watson: It says, "... every such application shall be granted."

Mr. Charlton: The problem is that they can designate by regulation. As soon as they become designated they are not eligible for a leave of absence.

Mr. Watson: Yes, but Mr. O'Flynn said they could do it--

Mr. Charlton: No, he said, "By regulation those applications shall be refused."

Mr. Breaugh: That is what it says, "by regulation."

Mr. Charlton: They have to grant it as long as the employee is not designated. If they do not want that employee to be a candidate, they simply designate and then they do not have to grant the leave of absence.

Mr. Chairman: But subsection 12(1) does not do that.

Mr. Breaugh: No, it is the regulation that does it.

12:10 p.m.

Mr. Chairman: I thought we were reading the regulation,

which was 12(1).

Mr. Breaugh: They passed a new one.

Mr. Chairman: All right. Carry on.

Mr. O'Flynn: Section 13 zeroes in on civil servants as opposed to crown employees, and repeats that they have no right to canvass on behalf of a candidate in a provincial or federal election. Again, there is a specially chosen group of civil servants which is denied the right to canvass or "actively work in support of" a candidate at any time, whether or not an election is coming. It reads:

"13(1) A civil servant shall not during a provincial or federal election canvass on behalf of a candidate in the election.

"(2) Notwithstanding subsection 1, a deputy minister or any other crown employee in a position or classification designated in the regulations under clause 29(1)(u) shall not at any time canvass on behalf of or otherwise actively work in support of a provincial or federal political party or candidate."

Section 14 contains the most blatant denial of human rights to be found in any statute in Canada. It says that unless he or she takes leave of absence to run for office during a provincial or federal election, "a civil servant shall not at any time speak in public or express views in writing for distribution to the public on any matter that forms part of the platform of a provincial or federal political party."

Since most public issues that are of concern to the average citizen--housing, pollution, inflation, the energy crisis, etc.--are also part of the platform of any self-respecting political party, civil servants are effectively prevented even from writing a letter on such topics to the editor of their favourite newspaper.

Section 15 prohibits "activity for or on behalf of a provincial or federal political party" during working hours. Since the previous sections deny crown employees the chance to canvass or speak or write publicly on behalf of a party or candidate, there is not much left for them to do, even in off hours.

Section 16 drives the point home by specifying dismissal as the penalty for breaching any of the above rules. It reads: "A contravention of section 11, 12, 13, 14 or 15 shall be deemed to be sufficient cause for dismissal."

The existing legislation governing the political rights of civil servants is premised on a civil service structured in the post-Confederation decade. In 1897, the public service consisted of fewer than 700 persons, most of whom were political appointments. Their security of tenure rested largely on the longevity of the political party in power. Laws prohibiting political activity were well suited to that administration.

But such laws are no longer appropriate in 1982. Just as laws have emerged concerning the employment rights of women or protecting

people of varied ethnic origin or religion from discrimination, so too must the Crown Employees Collective Bargaining Act be changed to accurately reflect the change of the Ontario civil service structure, and the right of employees to political activity.

Political patronage is no longer the criterion for employment. In 1982, a merit system is in place. Job selection is based upon experience, skill and ability. Just as the civil service has become representative of a cross-section of races and religions, so too has it employed a wide spectrum of political philosophies and opinions. Retention of an employee's job no longer hinges upon support for the political party in power.

It has been argued that, because of their access to confidential information, government employees must be prepared to give up their right to engage in partisan politics. The implication is that civil servants will publicize or otherwise divulge to unauthorized persons confidential information which will give one party an unfair political advantage over another. However, it should be remembered that all civil servants are required to swear an oath of office and secrecy, which reads in part as follows: "Except as it may be legally required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being a civil servant."

Apart from the fact that the vast majority of government employees, particularly those in the bargaining unit, do not have access to confidential information, the oath of secrecy provides more than adequate protection for the government against misuse by civil servants of confidential documents, whether for political purposes or otherwise. I would point out that over 23 per cent of civil servants are excluded from the bargaining unit.

OPSEU seriously questions the government's continuing failure to recognize these concerns. The rationale of unduly influencing policy no longer has any merit. At best, only 500 of 60,000 employees are in positions of government security or policy decision-making. To deny the remaining workers political freedom is indeed a denial of human rights. A clerk processing OHIP claims and a driver of snow-clearing equipment do not input into policy-making in their jobs and yet such people are denied the freedom to publicly support a political party and openly support or criticize policies advanced by parties vying for election.

For those employees involved in decision-making, those setting spending priorities or reviewing grant structures, we understand that restrictions must be enforced; these people do have the power to alter government policies. But a clerk or mechanic has no less social concern and no more political clout than a doctor or an industrialist. In fact, they have less, because the doctor has greater financial resources to contribute, while the industrialist has the economic power to control jobs. Yet no such restrictions inhibit these individuals in their participation in political life.

The effect of removing the political muzzle from Ontario government employees should not be exaggerated. There will be no mad rush by thousands of civil servants to trumpet their political views from the housetops. As with the rest of the population, only a

minority of activists will wish to espouse their beliefs publicly. Yet that right is fundamental to a democratic society. It is now enshrined in the Canadian Charter of Rights and Freedoms. Ontario has an opportunity to be the second province--British Columbia did it long ago--to free its nonpolicy-making employees from their political shackles and open up our society to their valuable contribution.

We therefore strongly urge the following revisions to the Public Service Act.

Recommendation 1: Subsection 11(c) should be repealed. The functions of municipal representatives are increasingly becoming a vital concern to members of society for it is the policies of this level of government that most immediately affect our daily lives. The Metro Toronto government alone administers a larger budget than the budgets of five provinces. The concern and the desire to hold elected office municipally, to ensure sound use of resources and planning is a growing concern shown by provincial civil servants. Yet there are very few, if any, elected municipal representatives who seek election without the political and financial support of the major political parties. This support varies from outright endorsement to behind-the-scenes support. For this reason, subsection 11(c) further excludes public sector employees from political life and it should be removed from the Public Service Act.

In reality, provincial civil servants are entirely restricted from seeking municipal elected office. Therefore, our recommendation 2: Subsection 12(2) should be expanded to include municipal candidates.

Recommendation 3: Subsection 12(1) should be amended to read:

"12(1)(a) A crown employee may seek elected office at the municipal, provincial or federal level of government.

"(b) Upon request, a crown employee shall be given a leave of absence to be a candidate in a municipal, provincial or federal election."

These amendments would provide a crown employee with the freedom to seek elected office and allow freedom of choice with respect to leave of absence.

Recommendation 4: Subsection 13(1) should be repealed. Canvassing during elections has increasingly become one of the most valid demonstrations of our society's freedom of political discussion and debate. Although we accept restrictions on such freedoms for senior decision-making personnel--none of whom are in the bargaining unit we represent--such limitations cannot be justified for those who have no policy-making involvement.

Recommendation 5: Section 14 should be repealed in its entirety. As political parties have matured, their policies have developed and have been extended to cover virtually every aspect of our society. Such a clause as section 14 therefore virtually excludes the 52,000 government employees we represent from speaking out publicly.

Repeal of this section would allow provincial employees to participate openly in their communities, in home and school organizations or in social service volunteer organizations of their choice.

We conclude by asserting that political opinions and partisanship are facts of life in the public service, with or without restrictions. As long as government employees do not use their positions for the benefit of a political party or politick during working hours, there is no excuse to deny them the political rights accorded all other members of the work force.

Recommendation 6: Section 16 should be repealed entirely. Every management, including the government, has the power to discipline or dismiss its employees for just and sufficient cause. Where collective agreements exist, that right is subject to the grievance procedure. The violation of those limitations on political activity that would remain in the Public Service Act under the above recommendations should be subject to the normal industrial relations process, i.e. management's right to discipline or dismiss, and the employee's right to grieve and have his or her case judged by the Grievance Settlement Board. To legislate that any and all violations, no matter how insignificant, warrant dismissal is a denial of elementary justice and an offence against common decency.

12:20 p.m.

The union concludes this submission by restating its recommendation that the cabinet adopt an order in council under the authority of the Executive Council Act changing the minister designated under clause 1(1)(j) of CECBA from the Chairman of Management Board of Cabinet to the Minister of Labour. To state our concern in a forthright manner, OPSEU fears that decisions regarding the proper functioning of the tribunal and the Grievance Settlement Board may be influenced by the government's interests as an employer as long as the present ministerial arrangements prevail. It is time to end a situation in which the chief referee is also the coach for the management team.

It is also time to grant unclassified employees full bargaining rights and the right to fully grieve termination of employment.

Further, it is long overdue that unionized government employees and their union should enjoy those freedoms of association and expression on political matters which are not only enjoyed by other workers and unions, but are guaranteed by the Canadian Charter of Rights and Freedoms.

Respectfully submitted by the Ontario Public Service Employees Union.

Mr. Chairman: Thank you very much, Mr. O'Flynn.

Mr. O'Flynn: I would just like to add that with all of these items here we have been told that yes, we have a case and that it is a good case, but we do not get any action. We hope that your

committee will help us to get some action on these matters.

Mr. Chairman: Do any members have any questions?

Mr. Breaugh: On the last point that you were discussing about political rights, does the union have any intention to challenge under the new charter to establish those rights if they are not provided?

Mr. O'Flynn: We have a case which is going to the Supreme Court. We would rather save our money.

Mr. Breaugh: That is a sensible proposition. Just prior to the last provincial election there was created a thing called a Board of Industrial Leadership and Development program and it was unveiled with a full-scale presentation, using several senior civil servants, and they continued to provide information, commentary and viewpoints during the course of the provincial election. Was there ever any attempt anywhere to discipline any of those senior civil servants for participating in a political process?

Mr. O'Flynn: I do not know of any.

Mr. Breaugh: In the last round of conventions for both opposition parties, Mr. Segal, who is employed by the Ministry of Intergovernmental Affairs, I believe, functioned in a way which seems to me to fall pretty clearly under section 14 about expressing opinions on political platforms of any party. Was there any attempt to discipline that particular individual?

Mr. O'Flynn: I do not know of any. I also know that one of the staff of the Premier's office was seen in one of the ads that the Conservative Party put out. I do not think he was disciplined. I am not the Attorney General, I do not have the power to--

Mr. Chairman: He was just delivering the Premier a message and got caught in the camera.

Mr. Breaugh: I certainly think there appears to be a couple of different standards being set here. Maybe if it is fair for one group it ought to be fair for everybody else.

Mr. O'Flynn: Since you bring up BILD, it is interesting to note that one of the items in BILD was related to the unclassified workers; that is, there was mention made of trying to give a different style of employment to people who want to work permanent part-time. Some people work for, say, half a day, and they are unclassified. That is the other category I was looking for, the permanent part-time worker. BILD said it was going to do this. It is difficult to know why, even considering this on top of everything else, the promise was made in the Board of Industrial Leadership and Development with regard to unclassified--that is what it breaks down to--and it was discussed by the commission with myself and Andy Todd.

In that context they showed us the BILD program and they said: "This is the part that applies to you. What do you think of this?" We said: "That will be great. We want permanent part-time people to be recognized and to be given permanence and to have their rights

under a contract prorated, permanent part-time and the same for seasonal." It did not happen. That is an important point that we forgot to mention, that it was found in the BILD program.

Mr. Breaugh: There were a lot of things found in the BILD program that have not happened.

Mr. Charlton: In relation to the political rights item at the end, and I think I mentioned this to the committee yesterday, Sean, you referred earlier to the law being an ass. I recall in 1975--it relates to the designation under the regulations--in order to avoid a court battle, the government de-designated 12 classifications.

I think that speaks clearly to the validity of the Public Service Act and those sections of the act that relate to political activities which in many of the other designated categories are still designated simply because those specific categories have not been challenged because there has been no individual prepared to challenge them. But the government's commitment to this piece of legislation in relation to political activities by civil servants is a commitment that is based on what it can prevent from occurring by using this piece of legislation to intimidate rather than their commitment to trying to justify that law in the courts.

Mr. O'Flynn: Also, I would like to point out again that over 20 per cent of civil servants are excluded from the bargaining unit. While it might be nice to say we are here speaking on behalf of all civil servants, we are here speaking on behalf of our bargaining unit members. I would put it to the committee that the 23 per cent who are excluded will look after the policy-making areas that they want to maintain for people who are without political affiliation publicly.

Mr. Watson: I would like to comment on paragraph 120. I do not disagree with your reasoning that leads to that in some cases, but the terms in which you express it to say in reality the provincial employees are entirely restricted from seeking municipal office, I just do not buy. It may happen in some communities, but there are a lot of municipal offices across Ontario where I do not believe it happens. There are a lot of examples where there have been provincial employees who have run for township councils, city councils and other things.

Mr. Charlton: That speaks of the government's willingness to enforce the law, not to whether or not they are restricted.

Mr. Watson: I am asking Mr. O'Flynn his opinion as to why he made that conclusion by saying that provincial employees are entirely restricted.

Mr. O'Flynn: We make the case that they are and we make it on the basis--

Mr. Watson: I think the facts will speak that they are not. That is what I am saying.

Mr. O'Flynn: We make the case that they are and that there

are enough restrictions there practically to prohibit them from seeking office. We think there is a simple answer to that and that is to remove all restrictions from civil servants. Why would you restrict them at all? That is the question which has to be answered. Why restrict them at all?

Mr. Watson: I do not follow your argument that they are. Your argument is that if they identify with a political party they are.

Mr. O'Flynn: That is right.

Mr. Watson: Well, they may wish to. But if they do not, then they have no restrictions.

Mr. O'Flynn: That is fair enough but if they wish to, they are and for someone who--

Mr. Watson: A minute ago you said that in reality the vast majority of civil servants were not going to run to join a political party. To me, your argument does not hold; I think it is factually wrong. But I do not even accept the argument. I am prepared to accept that in some cases it occurs. There is no doubt about that because there are examples of that. But to say that provincial employees are entirely restricted from seeking municipal office is just not correct.

12:30 p.m.

Mr. O'Flynn: Do you think it is right that there should be these kinds of political restrictions on civil servants who are snow-plough operators or who work in a park or car park attendants or secretaries? Do you think the political restrictions that are on them are good?

Mr. Watson: As far as political party goes?

Mr. O'Flynn: Yes, do you think it is good to have these restrictions on people at that level? Do you think it serves any useful purpose?

Mr. Watson: I do not think a person can serve two masters, that is what I happen to think.

Mr. O'Flynn: So someone sweeping the streets--

Mr. Watson: You are changing the subject. We are discussing 120 which says that provincial employees are entirely restricted and that is just wrong. If you want to say, provincial employees who have identified themselves with a political party, then I can concur with your conclusion, but I cannot agree with the paragraph that you put in there because it is just not right.

Mr. O'Flynn: I hesitate to get into an argument over the kind of raisins that we put in the cake rather than on the whole issue of the cake. I am saying to you, do you agree with the present restrictions that are on civil servants at the lowest level?

Mr. Watson: There are no restrictions about civil servants going into municipal politics.

Mr. O'Flynn: How about federally and provincially? Are you in agreement with those restrictions?

Mr. Watson: Yes, I am in agreement with the present policy. There may be room for some negotiation but on the general policy of trying to serve two masters we would fundamentally differ.

Mr. Charlton: What is this question of serving two masters? We are talking about the public service. We are not talking about the Tory service, we are talking about the public service. What is this question about serving two masters?

Mr. Breaugh: I would be interested in Mr. Watson's opinion since he has gone out of his way to make it here on civil service staff participating in the provincial election.

Mr. Watson: I do not think they should. The conditions have been well laid out as to how the present civil service--Mr. Charlton knows very well and I know it very well, probably better than the others do.

Mr. Charlton: I know how you can make them change it.

Mr. Watson: The present basis under which people are allowed to participate is working.

Mr. Chairman: Mr. O'Flynn, on that point, we have a research report here from the National Union of Provincial Government Employees. They break it down on a province by province basis, what the present regulations are regarding public employees. Even in Saskatchewan, it has been there for a few years.

I am just wondering, there must be some reason for this, that seven or eight provinces have almost similar regulations as Ontario. The legislatures of those provinces have decided that there is going to be some restriction on public employees in respect to political activity in their respective provinces. You are involving a lot of legislators here. There must be some good reason for it.

Do you not feel that? Not just the snow-plough operator but people, say, in a relatively higher position within the public service, possibly a more responsible or sensitive type of employment; they could possibly be out on the hustings in some cases--I do not know if we can say probably, but possibly--making speeches and statements against the governing party, in other words, their employer. What is the relationship of that person on his or her job or in the work place? I realize they have an oath of office and that they are restricted in that way. Are you agreed that they should not be active politically during working hours? You have a 32-day or a six week campaign. How does a person discipline himself? What if he gets caught with a button on his lapel as he walks into his job in the morning and somebody says, "You had better take that button off," little things like that?

I think it would be, frankly, more dangerous, undermining to

that employee in relation to his colleagues and fellow workers within that office. I can see the possibility that with his immediate boss, who may be of a different political stripe, it may in some way affect his working relationship and his job within the civil service. From a very practical point of view, I feel that these regulations are for the benefit of the worker in many cases.

Mr. O'Flynn: Let me respond in this way: First of all, as we show in this brief, it has its origin in a time when very few people worked for governments. There were not the huge bureaucracies that there are now, and I mean bureaucracies in a good sense, not in a bad sense. So it is a matter of coming of age. You will find legislation now which speaks to the issues of women's rights which was not there 30 years ago, 50 years ago. You will find legislation has moved with the times and we think this is one piece of legislation that has not moved with the times.

I worked in a community college. What is the difference between a community college and an OHIP office, or what is the difference between a secretary who works in a college and a secretary who works in an OHIP office? What is the difference between a secretary who works at Hydro and a secretary who works at the Workmen's Compensation Board? Their daily work is not political in nature, it is a matter of getting something done. What they do outside does not affect them at all in the doing of that work. If you want to take the example I give of the snow-plough operator or the person who works in the kitchen of the psychiatric hospital, the work of these people is not affected by the political party that they support in their off-work hours. The government is far removed from them.

I will admit that people like Dr. Stewart from the Premier's office, people like George Waldrum, head of the Civil Service Commission, people like Roly Scott, who is also in charge of industrial relations in the Civil Service Commission, have very important input to make to the government and I am not here making the case for their political rights. I am here making the case for the people who do not have that kind of input and who want to exercise their political rights by supporting whatever party they want to.

As I say, this is not a change, if the government were to change this it would not bring about a revolution. Civil servants are no different to any other workers. You would have very few people who would immediately exercise their new rights--you would only have a few.

Mr. Charlton: Just on the point the chairman raised: Why, with the case of civil servants, would you want to prohibit a civil servant from making the same choices that any other person makes in his day-to-day life? So what if his boss is of a different political stripe? If you work for the Steel Company of Canada and you are an active Liberal and your foreman is an active Tory or an active New Democratic, you run the same risk, by being politically active up front, of limiting yourself in terms of promotion and so on as you would do in the civil service. Why would you want to restrict a civil servant from making that choice?

12:40 p.m.

Mr. Chairman: The only point I made was the fact that the government is made up of one of the political parties which is the employer of that particular person. Certainly there are more ways of affecting that person's employment within government than there would be within Stelco.

Mr. Charlton: Give them full collective bargaining rights and there will not be.

Mr. Chairman: Maybe one reason would be that the employee of Stelco, apart from this, has more bargaining rights than the employee within your organization, as far as grievance is concerned and things of that nature.

Mr. Charlton: You are making a good case for giving them full bargaining rights. That is good.

Mr. Chairman: That is a point, but I just think it is human nature. A person who is in a managerial position or a superintendent, or in a higher or more sensitive position and who has charge of a number of government employees within his office or jurisdiction, may very well, in many ways, affect the security of that person's job because that person has decided to become politically partisan during an election campaign and has in some way, despite an oath of office--I realize not all of them necessarily take that--conflicted with that. How do you limit yourself? You are standing up on a platform and saying--

Mr. Charlton: The problems exist, Mr. Chairman. The question is simply whether you are going to play big brother and impose protection on people or whether you are going to let them make their own choices and decisions about the risks they want to run.

Mr. Watson: The worst side of that is if they do not take on political activity. George has explained the one side of it, saying that a supervisor may in some way affect somebody under him if he did take it. The worst side of that is, what would happen if they did not take on political activity?

Mr. Charlton: Nothing.

Mr. Watson: But human nature being what it is--

Mr. Chairman: You are not implying that some of the superintendents are taking a dim view because somebody under them has not been active in a political organization.

Mr. Watson: I am saying at the present time they are protected from that.

Mr. Chairman: You are right.

Mr. Watson: Give them political rights and then they are not protected from that.

Mr. Charlton: Their present bargaining unit, OPSEU, may be restricted in terms of full collective bargaining, but the union already has the power to protect them from that, Andy. That is not a problem.

Mr. Eichmanis: I might also point out that in other jurisdictions there are clauses which prevent the employer from enforcing the employee to participate in various political activities. In other jurisdictions they have that provision in the act. The Ontario act does not have that provision.

Mr. Watson: That is because the Ontario act says you do not take part at all.

Mr. Chairman: Are there any other comments?

Mr. O'Flynn: We are speaking on behalf of the union members and I am telling you--

Mr. Watson: Do you really believe you are speaking for the majority of your union members on this one? Do you really honestly believe you are speaking for them? You have stated that the majority of them will not join a political party. I would concur with that. Do you really think the majority of them want political rights?

Mr. O'Flynn: Look, you and I are both elected. As much as you speak for the people in your constituency, to what extent they would agree with you, I do not know. But I accept that you represent them. In the same way, I am elected by 80,000 people to represent their interests, I am speaking here and I am telling you what their interests are. There is no other place to go to find out what their interests are. Just as you have the right to speak on behalf of your constituents, I have that right also and exercise it.

Mr. Chairman: Are there any other questions or comments? Mr. O'Flynn, thank you very much for a very detailed and complete submission.

Mr. O'Flynn: Thank you very much.

Mr. Chairman: And Mr. Todd, as well, we appreciate your coming this morning.

Mr. Todd: Thank you very much.

Mr. Chairman: Gentlemen, before we adjourn, as you probably know, we will not be meeting on Tuesday morning. There is a very important caucus meeting on Tuesday morning.

Mr. Watson: --Tuesday morning cannot make it?

Mr. Breaugh: My caucus meets Monday afternoon.

Mr. Chairman: Well, we are not going to meet Monday afternoon. So I expect we can meet at two o'clock, Jack, without any trouble, on Tuesday.

Mr. J. M. Johnson: I would think we could even start a

little earlier, George. Why could we not sit an extra half hour or an hour?

Mr. Chairman: Knowing those caucus meetings, and the subject is rather important and delicate--

Mr. Breaugh: What is the subject matter?

Mr. Chairman: I do not know. I think it is travelling, per diem expenses.

Mr. J. M. Johnson: Mr. Chairman, have we confirmed the meeting for Thursday?

Mr. Chairman: Yes. They are coming.

Mr. Watson: Are you going to have a quorum on Friday of next week?

Mr. Chairman: Regarding Tuesday again, in the event that we do not finish and, say, around five o'clock, it looks as if we have got a couple of hours' work still to go and there are a number of questions, we may then resume again in the evening, if that is all right with you gentlemen. However, I am sure that, knowing this possibility exists, we will wind up no later than six o'clock.

Mr. Charlton: We will agree to that, Mr. Chairman, if you will agree that if you and your colleagues are not here by two o'clock on Tuesday we will start without you.

Mr. Chairman: That is fine. We will be here.

Mr. Treleaven: If you can get a quorum.

Mr. Charlton: The motion I just put implies that a quorum will be seen without your presence.

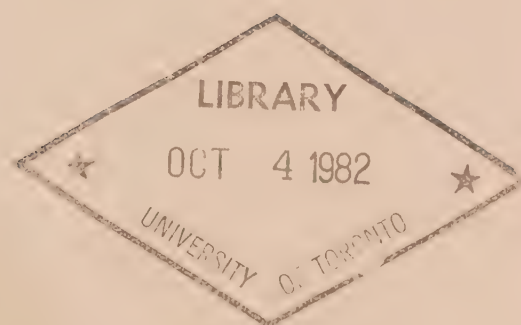
Mr. Chairman: We will be here.

The committee adourned at 12:48 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS
AGENCY REVIEW: CIVIL SERVICE COMMISSION
TUESDAY, SEPTEMBER 14, 1982
Afternoon sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
McLean, A. K. (Simcoe East PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher, Legislative Library

Witnesses:

From the Civil Service Commission:

Hansen, J., Executive Secretary, Senior Appointments and
Compensation

Jackson, J. A., Executive Director, Compensation Division

Scott, R., Executive Director, Staff Relations Division

Tobias, L. M., Director, Recruitment Branch

LEGISLATURE OF ONTARIO
STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Tuesday, September 14, 1982

The committee met at 2:10 p.m. in room 151.

CIVIL SERVICE COMMISSION
(continued)

The Acting Chairman (Mr. McLean): I see a quorum. We will go ahead with the review of the Ontario Civil Service Commission. Would you gentlemen like to indicate who you are?

Mr. Scott: Mr. Chairman, I am Rollie Scott, executive director of the staff relations division. With me is John Jackson, who is the executive director of the compensation division of the Civil Service Commission. Unfortunately, Mr. Waldrum, the chairman of the commission, is confined to bed by his doctor and unable to be here. He offers his apologies and asks us to be whatever help we can to the committee.

With the permission of the committee, I would like to read a statement on behalf of Mr. Waldrum.

The Acting Chairman: Proceed.

Mr. Scott: Attached to the statement will be an organization chart of the commission and a chart that shows how the various parts of the Public Service Act apply to the different groups of employees by way of appointment, grievance procedure and political activity.

Mr. Mancini: Excuse me. You guys are not involved in yacht clubs or anything?

Mr. Scott: I am not a member of a yacht club.

Mr. Mancini: You do not own any yachts?

Mr. Jackson: I am a member of a yacht club.

Mr. Mancini: That is not the one in Bath, is it?

Mr. Jackson: No.

Mr. Mancini: Just checking.

Mr. Scott: After I have completed the statement, I would like to make some brief comments on the submission made by the Ontario Public Service Employees Union, not by way of debate or argument but for purposes of clarification of some of the statements made.

I would like to give a bit of history of the Civil Service Commission and the Public Service Act. In 1918, the Legislature enacted the first Public Service Act and established, among other

things, an office of the Civil Service Commissioner, the precursor of the Civil Service Commission. The mandate of this commissioner was to take whatever steps were necessary to infuse the personnel administration practices of Ontario's public service with the merit principle.

It is of more than passing interest that one of the first steps the commissioner undertook to realize his mandate was to develop descriptions for every position that fell within his ambit. It should be added that position descriptions still form the framework on which most of the purely personnel administration work of the commission is based.

At the turn of the century, most of the employees in government were secretaries and clerks. Since that time, the number and types of employees have increased dramatically. The Ontario government now employs not only clerks and secretaries but also doctors, dentists, pharmacists, radiologists, community planners, a long list of people and, as seen here, even a blacksmith at Upper Canada Village, I believe, among other trades down there. As can be imagined, such a wide range of positions is not the easiest personnel base to administer.

Over the years there have been a number of amendments to the Public Service Act as the size and complexity of the work force of the government increased. A consolidation took place in the early 1960s, which resulted in a revised Public Service Act which took effect on August 1, 1962.

Under this act, a department of civil service was established, with a deputy minister separate from the chairman of the Civil Service Commission. Then, in 1972, the Committee on Government Productivity suggested the following changes to the structure of the Civil Service Commission: (1) that qualified commissioners from outside the public service should be added to the Civil Service Commission and (2) that the position of the deputy minister of the department of civil service should be abolished and the staff of the department should report to the chairman of the Civil Service Commission. Both of these changes could be effected under the existing act, which remained basically unchanged from one enacted in 1962.

The rationale for the first change was to extend the purview of the commission by the infusion of different experiences and attitudes than those found among civil servants, to get the view of outside industries, as it were. This change was implemented. The rationale for the other change was to resolve the confusion of purpose that sometimes arose between the commission and the department of civil service. This change also was implemented.

Despite such changes, the present overall purpose of the Civil Service Commission and its staff remains basically the same as it was when the first Public Service Act came into being in 1918. It is to develop and provide corporate personnel policies, programs and services which will result in a proficient and committed work force, effectively implementing government programs. Since the Civil Service Commission develops and provides these personnel policies, programs and services within the context of the Public Service Act

and its regulations, they are consistent with the dual principles of equity and merit enshrined in this act.

As has been indicated, the Civil Service Commission was established under the Public Service Act to ensure that the tenets of the act were observed by those involved in the conduct of personnel administration. To effect this responsibility, the act provided the commission with the ultimate authority for virtually every personnel decision undertaken in the ministries of the government. At the instigation of the Committee on Government Productivity, this authority, once reserved to the commission, has now been delegated to the deputy ministers of the various ministries. However, the commission still exercises an overriding authority over the policies and procedures under which the day-to-day personnel decisions in the government are made.

The chairman of the Civil Service Commission acts for the commission in directing a staff which develops and maintains the corporate personnel policies, programs and services provided by the Civil Service Commission. The chairman is also responsible to the Chairman of Management Board for the provision of certain services that are required by statutes other than the Public Service Act. One such act, of course, is the Crown Employees Collective Bargaining Act. These services include advisory services and collective bargaining services for the Management Board of Cabinet and personnel services to the ministries.

The chairman of the Civil Service Commission, then, performs a dual role in the Ontario public service. He is responsible for those areas of personnel administration inspired by the Public Service Act, for which he reports to and represents the Civil Service Commission, and he is responsible for the provision of personnel services on behalf of the Management Board for which he reports to the Chairman of Management Board of Cabinet.

He effects these two distinct roles through the medium of the staff of the Civil Service Commission. The duties of the staff of the commission fall into two broad categories: there are those that flow from the Public Service Act and those that are required by the Management Board. The duties resulting from the Public Service Act are listed in the report prepared for this committee. As indicated earlier, most of these duties have now been delegated to the ministries, but the staff of the commission is still responsible for ensuring that these duties are properly carried out.

2:20 p.m.

The organization of the Civil Service Commission is based primarily on these duties:

(a) There is the recruitment branch, which provides staffing policies and services to enable ministries to fill their vacant positions with qualified people.

(b) Next, the staff development branch provides policies and services to improve the performance of public servants.

(c) The classification branch provides classification policies

and standards to enable all nonexecutive positions in the classified service to be equitably classified.

(d) The pay policy branch determines salary ranges and pay policies to attract and retain competent staff.

(e) The benefits policy branch provides policies on the perquisites public servants receive; that is, the various benefits plans that are available to public servants.

(f) Last and, I might add, not least, the staff relations division provides programs and services governing employer-employee relations to help the government as employer in collective bargaining.

There is also a senior appointments and compensation branch, which provides policies, programs and services solely concerned with the recruitment, compensation and development of those public servants filling executive positions in the Ontario government.

In addition to these branches, which are concerned with the implementation of the major duties of the commission, there are also a number of branches providing specialized services. These include:

--the personnel audit branch, which was established to determine through regular audits the degree to which ministries are abiding by the policies, procedures and guidelines of the commission and to determine their continuing relevance in effecting the mandate of the commission;

--the administrative services branch, which provides support services to meet the needs of the management of the Civil Service Commission and certain other specific services for the ministries on behalf of the government; and

--the staff who provide the support services required by the Public Service Grievance Board, the classification rating committee, the Ontario Public Service Labour Relations Tribunal and the Crown Employees Grievance Settlement Board.

The organization chart of the Civil Service Commission, a copy of which has been submitted to the committee, delineates the reporting relationships established to enable the chairman of the commission to direct and control the activities of the branches.

Turning now to the report prepared for the procedural affairs committee to describe the Civil Service Commission, a number of questions have been raised, and these questions--not all of them, but some of them--will be dealt with in the order in which they appear in the report.

On page 2 of the report the following statement appears:

"The act states that full-time members of the commission are deemed to be civil servants, and yet the act does not appear to distinguish between full-time and part-time members."

This section of the act is designed to ensure that if there

are full-time members of the Civil Service Commission, they are deemed to be civil servants and subject to the same rules as other civil servants.

All current members of the Civil Service Commission can be said to be part-time members, since they all hold other full-time positions either in the public service or for a private sector employer. I guess the only member who might be considered or could be argued to be a full-time member is the chairman, who spends more of his time on Civil Service Commission business than any of the other members of the commission. The other members meet once a week at most, and not every week, just to make decisions on certain policies put before them, but they hold other full-time jobs.

On page 5 of the report is the following statement:

"Under section 5 of the act, the commission is given the power to exclude any position from the classified service for a period determined by the commission. This section in effect permits the commission to circumvent the classification system and permits the appointment of individuals who may not be qualified for the position."

Let me assure the committee that this provision of the act was designed and in practice is used to accommodate certain special circumstances and does not result in the appointment of unqualified persons.

On the request of a ministry and where special circumstances exist, the Civil Service Commission may remove a position from the classified service for a specific period. These special circumstances invariably occur where an individual is well qualified to carry out the duties of the position but should not become or does not wish to become a civil servant. This may occur in the following circumstances:

(a) There is a problem involving pension transferability. An employee, of course, does not wish to sever his connection with his current employer and thereby lose pension rights.

(b) The individual wishes to remain linked to his or her employer and is prepared to work for the government only for a limited period of time.

(c) The employee wishes to have part-time employment, which is not allowed for civil servants at the present time because of pension eligibility requirements.

The following statement appears on page 7 of the report:

"Sections 27, 28 and 29 of the act deal with arbitration and negotiating matters related to the Ontario Provincial Police. It is not clear why these provisions are contained in the Public Service Act as opposed to the Police Act."

Bargaining rights for public servants, including members of the Ontario Provincial Police, who are civil servants, were first established in the revised Public Service Act of 1962. When a

special act to define bargaining rights and procedures for all crown employees was enacted in 1972, the bargaining rights and related procedures were continued in the Public Service Act for the Ontario Provincial Police. This decision was made because the procedures in the new act would not have been appropriate for a police bargaining unit, which by law cannot join or be affiliated with a trade union.

Incidentally, it was the desire of the Ontario Provincial Police Association that their procedures remain under the Public Service Act rather than under the Crown Employees Collective Bargaining Act with other unions with which they could not affiliate because they are a police force.

On page 13 of the report some question is raised as to the meaning of the terms "civil servant" and "crown employee" as they are used in sections 11 to 16 of the Public Service Act, those sections that deal with political activity. Perhaps some expansion on the definitions in the Public Service Act would assist the committee. The definitions read as follows:

"'Civil servant' means a person appointed to the service of the crown by the Lieutenant Governor in Council on the certificate of the commission or by the commission, and 'civil service' has a corresponding meaning."

The Civil Service Commission appoints to the probationary staff, and then the Lieutenant Governor on the certificate of the commission subsequently appoints to the permanent staff, to the classified staff. Generally speaking, the term "civil servant" refers to the group of servants who are employed in the various ministries of government. There may be some exceptions to that, but in almost all cases that is what the term "civil servant" refers to: those people employed in the ministries of government, working directly under a deputy minister and a minister.

Again, the definition in the act of a public servant means "a person appointed under this act to the service of the crown by the Lieutenant Governor in Council, by the commission or by a minister, and 'public service' has a corresponding meaning."

The term "public servant" refers to all persons appointed under the Public Service Act and includes all civil servants, described above, appointed by the Lieutenant Governor or by the Civil Service Commission, but also includes those persons appointed to the unclassified service by a minister of the crown. So "public servant" includes a larger group of employees, but it also includes all employees who are civil servants.

2:30 p.m.

Again, going back to the act, we read that "crown employee" means a person employed in the service of the crown or an agency of the crown but does not include an employee of Ontario Hydro or the Ontario Northland Transportation Commission. The term "crown employee" includes all civil servants and all public servants and, in addition, includes persons employed in an agency of the crown. These latter people are not appointed under the Public Service Act.

These terms are not interchangeable and, as used in sections 11 to 16, impose different limitations as to permissible political activity on the civil servant who is employed on the full-time staff of a ministry of government than they do on a crown employee who is employed in an agency of the crown. Some might suggest they are a little further removed from the seat of power than the civil servant is.

Section 22 of the act deals only with public servants and the powers that a deputy minister may exercise vis-à-vis these public servants. Other crown employees, those who are not public servants, are dealt with, as your report indicates, under separate legislation and their rights and obligations would be set out in the applicable legislation. That is the explanation of why section 22 only deals with the right of a deputy to dismiss a public servant and not a crown employee. That is submitted on behalf of Mr. Waldrum.

Mr. Chairman: Thank you, Mr. Scott. I understand that you would like now to make a few comments with respect to a presentation we had last week. Would you like to go ahead and do that?

Mr. Scott: Yes, Mr. Chairman. Perhaps it might be helpful and might either answer some of the questions that the committee members may have or give rise to additional questions.

It is not the role of a civil servant to defend or criticize the legislation enacted by the Legislature, and since Mr. O'Flynn has named me as one of the senior civil servants who should not engage in political activity, and I assume therefore he would rush to my defence if I were to be disciplined for such activity, I will try to be very careful in what I have to say, remembering that I am a civil servant.

I am not here, as I say, to defend or criticize the legislation enacted but to make these comments purely for clarification and to define what does exist and what is available to public and civil servants under the existing legislation.

The union's brief tends to leave the impression that Ontario public servants and their representatives have suffered great hardship over the years because of the legislation under which they have had to operate. It also suggests that public servants in other jurisdictions and other public service unions are not subjected to similar limitations. This is simply not the case.

In order that the committee may have a more balanced picture of what has actually happened in the Ontario public service over the years I would like to touch briefly on a few of the major issues raised by the union.

First, the union has devoted more than half of its brief to the question of who should have statutory responsibility for the Crown Employees Collective Bargaining Act. As Mr. O'Flynn indicated, the government, at Mr. O'Flynn's request, asked Professor Weiler to review and report to cabinet on this question. Professor Weiler's report and recommendations are now with the cabinet and I assume a decision on this matter will be made in due course.

In other words, Mr. Chairman, this question of ministerial responsibility does not come within the purview of the Civil Service Commission, and I will have nothing more to say as to the merits of the union's case.

However, one statement in the union's brief comes close, perhaps unintentionally, to impugning the integrity of the current minister. This statement appears in paragraph 129 on page 52 of the union's brief, and I quote:

"To state our concern in a forthright manner, OPSEU fears that decisions regarding the proper functioning of the tribunal and the grievance settlement board may be influenced by the government's interests as an employer as long as the present ministerial arrangements prevail. It is time to end a situation in which the chief referee is also the coach for the management team."

To my knowledge, at no time has the current minister or any of his predecessors attempted in any way to influence the functioning of the tribunal or the grievance settlement board in the interests of the employer. In my view, it is inappropriate innuendo to say that the Chairman of Management Board is chief referee and also coach of the management team, because he does not referee.

The grievance settlement board and the Ontario public service tribunal are independent bodies with side members representing the points of view of the union and the employer and they make their decisions. As you might have gathered from the government reaction to some of those decisions, the government was not always happy with those decisions. Nevertheless they accept them, because this is an independent tribunal.

So there has been no influence, and I think it is an unfortunate choice of words which suggest that the minister, in the dual role, might interfere. But I have nothing more to say on that particular point.

My second comment relates to the treatment of unclassified staff. Here the union related a number of horror stories, I suppose they could be called, about the shabby treatment of unclassified employees but said nothing about the thousands of casual employees who found satisfying employment in the province over the years at salary levels that are comparable to those of full-time civil servants and who have a number of other benefits.

I believe the benefits are set out in the report prepared for your committee. They are also listed in the collective agreement, because there is a section in the collective agreement devoted to unclassified staff and they have the same benefits that are available to classified employees, although there are some fairly major exceptions. I think that is understandable, because these people are part-time employees and not full-time employees of the government.

The chairman of the Civil Service Commission has indicated to the union that he is prepared to consider changes that would further improve the conditions of employment for unclassified staff, particularly those who have worked for the province on a part-time

basis for a number of years. Mr. O'Flynn suggested that the discussions faltered because the commission did not have the authority to dictate to the ministries. That is not the case. The commission speaks for the employer in discussions with the union, and the employer is the Management Board of Cabinet. So it is the Management Board of Cabinet that has the authority, and not the ministries.

I suggest that the main reason for the failure of these discussions was the all-or-nothing position adopted by the union. The matter of improved working conditions for unclassified staff is still before a board of arbitration, and any further discussion of the government's position with respect to unclassified employees would be inappropriate at this time.

The third point concerns the references to the GO Temporary Services. For many years, the Civil Service Commission has operated its own temporary help service. Several thousand people who do not wish to work on a full-time basis, but prefer the relative freedom of working when they please and for as long as they please, have registered with the government temporary help program.

The program was designed for short-term staffing of clerical and stenographic positions and is still largely used for that purpose. There are some exceptions, but they are very much in the minority.

GO Temp employees are paid within the salary ranges that apply to equivalent civil service jobs and, in addition, are paid four per cent in lieu of statutory holidays and four per cent in lieu of vacations.

We believe the program has worked to the satisfaction of the employees, many of whom remain on our registration list year after year, and to the satisfaction of our client ministries. I suggest the union is being slightly melodramatic when it suggests this arrangement is "worthy of sweatshop operations."

The fourth point relates to the union's comments about the length of the probationary period. It is generally the case that probationary periods within government--any government, I believe--are longer than those in private industry. I do not profess to know the origins of this fact of life, but I would assume that the early legislatures in Ontario and elsewhere felt that people who were hired to serve the public should be observed over a longer period of time than their private sector counterparts before they were accepted as permanent employees.

2:40 p.m.

While it has been argued that a lengthy probationary period is not required for public servants to perform relatively unskilled jobs, there is such a wide variety of jobs within government that it would be difficult and in some cases unfair to attempt to establish probationary periods of different duration for different employees on the basis of the complexity of their work.

One might also ask what prejudice arises from a one-year

probationary period for an employee who is performing a satisfactory job. There may be some prejudice for an employee who is not performing satisfactorily, but I do not think many people would rise to the defence of those people.

The last comment concerns the limitations on political activity by crown employees and the unions that represent them. The union brief would have you believe that Ontario is the only jurisdiction that places such limitations on civil servants and their unions. Such is simply not the case. Most, if not all, other public jurisdictions impose some degree of limitation on political activity. I believe, Mr. Chairman, you referred to that fact at the last hearing.

In the interests of time, I will cite only one example. With respect to political activity by bargaining agents--that is, the unions that represent the public servants--the federal Public Service Staff Relations Act contains the following provisions:

"The board shall not certify as bargaining agent for a bargaining unit any employee organization that (a) receives from any of its members who are employees, (b) handles or pays in its own name on behalf of members who are employees or (c) requires as a condition of membership therein the payment by any of its members of any money for activities carried on by or on behalf of any political party."

Then I would like to read the similar provisions in Ontario's Crown Employees Collective Bargaining Act. I think you will soon see why I chose that example for comparison. It says:

"'Employee organization' means an organization of employees formed for the purpose of regulating relations between the employer and employees under this act, but does not include such an organization of employees that

"(1) receives from any of its members who are employees any money for activities carried on by or on behalf of any political party;

"(2) handles or pays in its own name or on behalf of members who are employees any money for activities carried on by or on behalf of any political party;

"(3) requires as a condition of membership therein the payment by any of its members who are employees of any money for activities carried on by or on behalf of any political party; and

"(4) supports or requires its members who are employees otherwise to support any political party."

There may have been a bit of plagiarism there, because you will have noted that the wording is quite similar.

With respect to limitations on political activity by civil servants, many other jurisdictions place some limitation on political activity, although they do vary in application.

There was some suggestion in the union's brief that the government could manipulate schedule 2 of the regulations under the Public Service Act so as to refuse leave of absence to run for provincial or federal office. I have been unable to find a single example of that ever happening, and I note the union stopped short of suggesting that it has happened.

The only other comment I would make is that the statement contained in paragraph 120 on page 49 of the union's brief is not factual, and that is the statement that makes reference to municipal activity and municipal politics. It says, "In reality, provincial employees are entirely restricted from seeking municipal elected office."

As one of the members of the committee said last day, that simply is not a factual statement. Many provincial employees have sought and have been elected to municipal office over the years, and I suspect this will be the case in the years to come.

Mr. Chairman, I would be pleased to try to respond to any questions the committee might have.

Mr. Chairman: Thank you very much, Mr. Scott.

Mr. Epp: I have one question to start things off. I notice, Mr. Scott, that on page 1, about 10 lines down in your opening statement, you say, "It should be added that position descriptions still form the framework on which most of the purely personnel administration work of the commission is based." I presume what we are saying here is that people in most cases get their positions on the basis of merit. Is that correct?

Mr. Scott: That is the case.

Mr. Epp: Could you give us examples of where they do not get them on the basis of merit in most of the civil service positions? We are talking about civil service positions; we are not talking about the political appointments by ministers and so forth.

Mr. Scott: There is one example, and if I fall short I will turn to John Jackson, who can give additional examples of it.

The government also has a policy of staff development and career progression; and while it is the case that employees must be qualified--and even at those senior levels where they have career progression they must be qualified for the job--there is not necessarily a competition to select the most competent person for the job. But people have formed career path progression for these people, and they may be appointed to these jobs without competition.

Mr. Jackson: The other thing it is saying is that within the civil service all jobs are described in position descriptions. There are about 32,000 positions described in the civil service; the functions, requirements, knowledge, etc., in each one of those jobs are described. That forms the basis for the classification system, because positions are looked at and classified according to the standards laid down in the classification system. It forms the basis for advertising for the positions, the requirements, the sort of individual you are after.

I think that is what it was saying. The first commissioner established the framework by basing it on the position descriptions of the jobs carried out by the civil service, and that still very much forms the backbone of the organization and the way personnel are managed within the civil service.

Mr. Scott: I have just been reminded of another instance where people are appointed to positions not necessarily on merit. In the case where there are too many employees in a particular program and employees have been declared surplus, those people have first choice on assignment to a vacancy, and the jobs, then, are not posted.

Mr. Epp: So what you are saying is that if those positions were opened up to the public, they might not qualify for those positions, but because they had first choice--

Mr. Scott: No. They have to be qualified. But there is not a competition--

Mr. Epp: But there are different scales of qualifications or competence.

Mr. Scott: They have to have the basic qualifications, but the jobs are not advertised. These surplus employees are assigned first. If there are any surplus employees who are qualified for a vacancy, they must be assigned to it before the job is opened up to other people who have jobs either within the civil service or outside.

Mr. Mancini: How many surplus employees do we have?

Mr. Scott: Employees under notice at the end of the period January 1 to September 1, 1982: 272 bargaining unit employees and 11 management employees, for a total of 283.

Mr. Mancini: What are these surplus employees doing?

Mr. Scott: They are currently working, but they have been given notice that their jobs will no longer be available as of a certain time. In the meantime, we try to find places for them and we hope we will place all of them in vacancies rather than resort to layoffs.

2:50 p.m.

Mr. Mancini: Do you usually have a running total of 283 surplus employees at all times?

Mr. Scott: Not at all times.

Mr. Mancini: Can you give us some estimate as to how many surplus employees you have on an ongoing basis?

Mr. Scott: That would vary, of course, in the period of constraint in recent years. I do not know whether Mr. Tobias has anything to add on the number. We can look at 1980. In 1980, the number under notice was 42. In the same period in 1981, the number was 62.

Mr. Mancini: Quite a jump. You mentioned that the surplus employees were doing other work. Before we get into the description of the other work they are doing, could you give us some indication as to what positions some of these surplus employees held before their positions were deemed to be surplus? Were they from all sectors of the civil service and from a variety of wage scales? Are any of these people possibly directors and have positions of that significance?

Mr. Scott: First, when you say they have positions, they stay on their same job. They are told, "Three months hence your job will disappear"; so they continue doing the same job in that period of time. If they have not been placed in the interim, they are released from that job. So they continue doing the same job, but they are given advance notice that their job is going to disappear.

Mr. Mancini: What you are telling us then is that on all occasions when you deem that a certain position will no longer be needed, the employee is properly informed that in a few months down the road this position will be eliminated. Is the employee given options? Does he move to a different ministry or a different job? Does he or she leave to find new employment? What happens?

Mr. Scott: Perhaps I will ask Mr. Tobias to explain the surplus policy, because they have rights within their own ministry and sometimes within other ministries.

Mr. Tobias: I will try to respond to that question. As Mr. Scott indicated, an employee who is declared surplus continues to work in his own position until he is either assigned to another position or released. In being assigned to another position, it is done on the basis of his being qualified to do the job in a vacancy and that he is assigned to that position on the basis of seniority, if he is a member of the bargaining unit.

The issue of choice does not enter into it, except that an employee does have the right to refuse such an assignment. If he does choose to refuse the assignment, he therefore loses his right to further assignment.

To try to answer your other question about the employees who are in a surplus situation, they range through all classifications, including the executive ranks.

Mr. Mancini: Basically what you have told me is that surplus employees do not cost the Treasury any extra money, because they are notified in advance and when the day comes action is taken as to what happens within the person's future or career, however you want to state it.

Mr. Scott: You asked about where these surplus people are. There has been a large move recently with the transfer of the Ontario health insurance plan service to Kingston and the Revenue move to Oshawa.

Mr. Mancini: Yes. We had nothing come to Amherstburg.

Mr. Scott: At one time, the maximum number of people for

relocation who had been given notice was 700. That is now down to 282; so significant progress has been made in placing these people in vacancies either within their own ministry or in other ministries.

Mr. Mancini: In your view, have positions been deemed to be surplus because you want to eliminate certain employees from the civil service?

Mr. Scott: I am not aware of any situation where that would have been done.

Mr. Mancini: A case where a director fights with his deputy every day and finally thinks that position should be surplus.

Mr. Scott: I am not aware of it.

Mr. Mancini: I just thought it would be interesting.

Mr. Epp: From time to time, we read in the newspapers about civil servants who have gained a lot of skills and experience and so forth in the civil service who then go out and form their own consulting firms and come back and consult to the government at fairly lucrative contracts. It seems to be a fairly good way to go, and they really benefit by having worked with the civil service.

Can you cite a few instances of where people have left the civil service within the past two or three years and are now consulting for the government after having worked for the Ontario civil service?

Mr. Scott: I do not have any statistics on that. I know there are some who have left and have come back as consultants. An attempt has been made to develop the policies which require that an employee be off the government payroll for a certain period of time before he could come back as consultants, something along the line of the federal legislation.

Mr. Epp: What is that? Two years?

Mr. Scott: I am not aware of--

Mr. Jackson: I am not sure whether it is two years. I think it is something in the order of two years since you have finished your employment with the federal government before they can hire you back on contract now. They did have some problems there.

Mr. Epp: Could you get that information for us, find out how many people have left the civil service within the past couple of years and are now consulting in one form or another with the government?

Mr. Scott: There are some examples where people have gone out to what you describe as the lucrative business of the consulting game but have found they made the move at the wrong time and have since reapplied for a job in the civil service.

Mr. Epp: I would think those people are in the minority.

Mr. Scott: Yes, and a product of the times.

Mr. Jackson: It may be difficult to get exact information on that, because the awarding of contracts for services is done by the ministry. This is a service contract where they would be hiring a company or an individual who is operating under a company name, and they do not come through the Civil Service Commission but are in the hands of the ministry to make the decision on awarding contracts. There is an overall review by Management Board if contracts get above a certain amount.

We can certainly have a look at what is available but we may not be able to give you very thorough figures on that.

Mr. Breaugh: There are a couple of things I would like to put to you.

Mr. McLean: Mr. Breaugh, could I have a supplementary to the previous question?

I wonder what happens, on a contract such as you were just talking about, when a person has been on contract and, after it has been renewed probably once or twice, the job that person has been doing comes up to be a full-time position. If they interview and the person who has been on contract does not get the job--somebody else from outside comes in and they hire him--what happens to the person who has been there for two years doing that job on contract but is not hired to do the job? Where does that employee go?

Mr. Scott: I will just comment, and Mr. Tobias can enlarge on it.

That is a different kind of contract. You are talking about unclassified employees at any level who are on contract and then that job being made a permanent position. The classified employees or permanent employees already on the staff of the government have first choice. In other words, In other words, it might be a closed competition reserved only to civil servants.

3 p.m.

Mr. McLean: But it was not closed. There was a new employee brought in completely from the outside who was given that job, and the one who had been doing it for two years was relieved of her duties.

Mr. Scott: Again, I assume that if they had an open competition they would set up a selection panel and they would interview all the qualified candidates, including the person who held the job for that two-year period. That person does not automatically have a grip or claim on that particular job. The person has got to enter the competition along with the others, and the most suitable candidate will be selected.

Mr. McLean: But if this person has done that job for two years, would they not think she was suitable? How would you feel if somebody told you after two years--

Mr. Scott: Presumably the panel decided another candidate was even more suitable. I cannot speak to it any more unless I knew the actual competition; but that could happen, and it does happen in that way.

Mr. Tobias: It comes back to the issue of the merit principle. You can have someone doing a job perfectly competently, but that does not necessarily mean that person is the best qualified; perhaps through the mechanism of a competition someone better qualified than the current incumbent was found.

Mr. McLean: But that person has nobody to turn to, because the union does not back a person who has been on contract. I do not think they will help such a person. Nor can such persons go to the Civil Service Commission. Who do they go to?

Mr. Tobias: I would presume that if the contract period had expired, that was the understanding upon which the employee would have accepted the position in the first place: it was a temporary assignment.

Mr. Chairman: I think we would have to agree with OPSEU's contention that those people are in a very precarious position as compared to a person who is a member of the civil service. As Mr. McLean has indicated, they do not have the protection of their bargaining agent, they do not have tenure and they do not have a grievance procedure.

There are a number of people who are part-time or on contract who would naturally like to be civil servants, or certainly to have some tenure or assurance that they are still going to be around doing the work they are capable of doing for a number of years.

It seems to me that whole process is open to a great deal of violation and bias and discrimination. Abuse is probably the best word. I am aware of a number of employees under contract with various ministries around the province, who happen to be constituents of mine, who cannot understand why they cannot become full-time employees and full-time civil servants or crown employees or whatever you want to call them. They find that the more they ask the question, the less the chance of their getting what they want. They do not want to make a nuisance of themselves but, if it comes to a point of some type of competition, the fact that they have asked for this may hurt them in any decision.

I am assuming you are agreeing with Mr. McLean that OPSEU has a point there, that they do not certainly have anywhere near the security or the representation or any assurances as to the future that a civil servant would have.

Mr. Scott: That is true at the moment, Mr. Chairman. But bear in mind that OPSEU does represent these employees; they have negotiated certain terms and conditions of employment for these people, and they are at liberty to negotiate, and in fact are in the process at this very moment of negotiating, improvements for them.

It is true that where a person is appointed under the Public Service Act by a minister for a fixed period, when the termination

of that period arrives, then the employee can be terminated, with the proviso that there be one week's notice. Again, there is such a wide variation of employees; many of them are working for only three or four months, and some of them may never come back again, but others do.

As I said earlier, I think the Civil Service Commission has indicated it is prepared to discuss what improvements can be made for these long-term unclassified staff, those who work year after year, but there will always be a large group of employees who are hired during the summer period--

Mr. Chairman: I am not talking about part-time.

Mr. Scott: Okay. But we indicated that we have had discussions with the union and, for reasons mentioned, we have not seen eye to eye yet, but presumably those discussions will be reconvened some time in the future.

Mr. Mancini: Is there some kind of competition before the contract employee is given his or her job?

Mr. Tobias: Not necessarily. It is not required.

Mr. Mancini: How would you go about hiring contract employees if you do not advertise the position?

Mr. Scott: In many cases the same employees come back year after year. In certain parts of the province they know the work is there and they come back or they apply to the various ministries in the outlying areas. In Toronto, they would apply for work and a certain number would be selected by the personnel branch of the ministry.

Mr. Tobias: I might add, however, that there are advertisements in Topical and in the public press offering jobs on a contract basis through competition.

Mr. Mancini: That was my original question: Do contract employees obtain their jobs through competition? I understood Mr. Scott to basically say that there was no competition, that they were just given the jobs. That confused me. Is there competition or is there not?

Mr. Tobias: There can be competitions, yes, and there are. There can be appointments through people coming back time after time. There can be unsolicited applications for employment by people arriving on a ministry's doorstep indicating their availability--

Mr. Mancini: Normally, how are full-time contract employees hired? Let us not confuse it with the summer employees who might work for the Ministry of Transportation and Communications. I want to refer to the type of person Mr. McLean was asking about, that type of job on a full-time basis, year-round. Are those people hired on a competition basis through ads which might be placed in the public press?

Mr. Tobias: They could have been, yes.

Mr. Mancini: What is the policy?

Mr. Tobias: The policy is that the people may be appointed to unclassified positions by a minister, and there is no required formula for doing so.

Mr. Scott: Contrasting that with the permanent unclassified employees: If there is a vacancy for a classified public servant, the collective agreement requires that the job be posted, that the job be advertised. In that case, competitions are held. In the other situation, there may be a competition. But in other situations the Public Service Act empowers the minister to appoint; there may be an appointment without a competition.

Mr. Rotenberg: Having a competition is optional.

Mr. Mancini: I am starting to understand that. How many of these full-time positions, as described by Mr. McLean, would be available or are filled at present? Are the numbers in the thousands or in the hundreds?

Mr. Scott: I am not sure if I understand.

Mr. Mancini: I am talking about the type of position that Mr. McLean described--I assume he was referring to a constituent--but also about what the chairman was describing where he said some of his constituents had worked on a full-time basis, possibly for more than a year, then the job was readvertised and someone else was hired. How many jobs are like that in the civil service?

Mr. Scott: That type of job would occur in a situation where a ministry does not know how long the project it has undertaken is likely to last and so it hires unclassified staff. If they subsequently decide that this job will become a full-time position, the requirement then is that they advertise.

3:10 p.m.

Mr. Mancini: How many are full-time?

Mr. Scott: How many of those exist at any one time? I have no idea.

Mr. Mancini: Do you have a rough figure?

Mr. Scott: No, I do not.

Mr. Mancini: I am not asking for specifics.

Mr. Scott: I really do not have any feel for it. Whether Mr. Tobias would have, I do not know.

Mr. Tobias: Obviously I am assuming you are not talking of all unclassified employees but, rather, those employees who are operating on a full-time basis of a continuing nature, maybe having had a contract repeated once or more.

Mr. Mancini: That is correct.

Mr. Tobias: Since those appointments are made within the ministries by the ministers, it would be very difficult to try to nail down any sort of number as to fitting that specific description, but my guess is that it is relatively small, perhaps in the hundreds across the surface. The large bulk of these kinds of appointments are for seasonal or summer help.

Mr. Mancini: So the particular case Mr. McLean was talking about you consider to be rare.

Mr. Tobias: Relatively, yes, in comparison to the numbers of employees across the surface.

Mr. Mancini: That is fine, Mr. Chairman.

Mr. Breaugh: A couple of things: From the point of view of the commission, is there any real difference whether it is the minister responsible under the Crown Employees Collective Bargaining Act, which is the current technique that is used, or what the union has been pushing for, that is, the Minister of Labour being appointed to be responsible for that? Does it make any real difference to you?

Mr. Scott: To me, as a civil servant, in my job in staff relations on the commission?

Mr. Breaugh: To the commission, yes.

Mr. Scott: No, I guess it would not. In other words, if the Legislature decided that a different minister would be responsible for the collective bargaining act, it would relieve some members of the commission of some of the duties they now perform. Presumably the Chairman of Management Board would continue to be the employer under the act and the collective bargaining, grievance procedure, the processing of grievances and all of that would remain the responsibility of staff with the commission. But it would not particularly make any difference.

Mr. Breaugh: I am simply looking for the other side of the argument, which I am sure is there somewhere. But in reading what Weiler had to say about it and what the union had to say, it seems to me it is reasonably clear that is a sensible move and will inevitably happen in due process and all of that. I am failing to see a counterargument, in particular, and I am a little confused as to why it would take so long to do what is apparently, from the point of view of most people who have spent some time on it, a pretty logical, sensible thing to do.

Mr. Scott: I can comment on that and make a personal observation as to the reasons and relate why, in the first instance, it was decided that a minister other than the Minister of Labour would be responsible for the Crown Employees Collective Bargaining Act. The reason was that there are very significant differences between employment in the private sector and employment by the crown; for example, as you know, the prohibition of the right to strike, plus all the other differences that do exist. Looking at the

practice in a number of other public jurisdictions, it was found that in many cases there was a separation of the two. The Minister of Labour and all his staff are developing policies that are directed to and designed for employment in the private sector. It was felt this should be a separate act, and with a different minister responsible for that act, to recognize the differences between the Labour Relations Act and the Crown Employees Collective Bargaining Act.

Some jurisdictions continue to maintain that distinction. I think that is in a paper that was prepared for the committee, that there are three or four public jurisdictions, other provinces, where the labour minister is responsible for the public service bargaining act, but in all the other jurisdictions, the provinces and the federal government, it is a different minister from the labour minister. That is the main reason I can think of.

Mr. Breaugh: One of the problem areas in that is, for example, very often it is argued now that in many of the things which the Ministry of Labour is purporting to kind of force down the private sector as being good ideas, or many of the things which the Legislature thinks should be happening in employment--equal pay for work of equal value, employment of the handicapped--it is very difficult for a government to maintain a whole lot of credibility when in fact those same policies are not put on the public sector as well as the private sector.

It seems to me there would be a number of advantages in having the same Ministry of Labour carrying on those programs, grievance functions and all the other things with the public sector as well as with the private sector.

Mr. Scott: Except, Mr. Breaugh, that many of those requirements or regulations emanating from the Ministry of Labour are in the Employment Standards Act and in many cases they do apply to the crown, of course. It is the bargaining acts themselves that are different. Regarding the employment of the handicapped, of course, I would think the government's record in that respect far surpasses that of private employers.

Mr. Breaugh: As far as your day-by-day operations are concerned, though, it would not be a hardship on you. It would not make a great deal of difference, I would suspect. It seems to me that since it is something the union feels very strongly about and, as you say, spent more than half their brief on, it is a matter which probably will get proceeded with in due course.

Mr. Scott: As I said, it is cabinet; it is a decision at that level. From the point of view of the staff, it would relieve me personally of some of my responsibilities if that change were to take place.

Mr. Mancini: But you might be declared surplus.

Mr. Scott: Half surplus.

Mr. Breaugh: Could I pursue what the union mentioned and what a number of us have mentioned as well, this whole area of use

of GO Temp and unclassified staff and contract staff? As I look at the numbers there, and I have not seen a combined total, it appears to me that the total number of people under those three classifications is roughly equal to the supposed number of jobs in the civil service that have been reduced.

My mathematics is not that great but, ballparking it, about 5,000 jobs supposedly have been taken out of the civil service, and yet I see roughly the same 5,000 jobs coming back in different forms. There has been a reincarnation of these positions. I am told that the same people are often sitting at the same desk doing the same job this week, except last week they were full-fledged members of the civil service and this week they are appearing in the form of a contract player. Are those numbers roughly equivalent?

Mr. Scott: No, Mr. Breaugh. In fact, the use of GO Temp has reduced in the past year at the same time as there was a reduction in the classified civil servants. The use of GO Temp has not increased to offset the decrease in the classified service. I am aware of that statistic because I had to respond to a letter from a member of the public asking that same question. So that has not been the case; it is not a question of reducing the classified service and increasing the unclassified.

Mr. Breaugh: Do we know how many contract players we have going at any given moment?

Mr. Scott: Again, Mr. Tobias from the staffing area will comment on that.

Mr. Tobias: We have a staff strength report as of the end of July 1982 which indicates there are 67,457 classified employees and 28,148 unclassified employees.

Mr. Breaugh: How about the contract players?

Mr. Mancini: I am sorry--

Mr. Breaugh: Would you read them again? Mr. Mancini is asking.

Mr. Tobias: Classified staff, 67,457; unclassified, 28,148.

Mr. Breaugh: That is what I would like to try to sort out now, just how many contract employees do we have? Do we know?

Mr. Tobias: There are 28,148.

Mr. Breaugh: Those are all contract?

Mr. Tobias: Those are unclassified employees, including GO Temp.

Mr. Breaugh: But I am asking how many people do we have working on a contract basis. You are not saying that 28,000 of them are there on a contract, are you?

Mr. Tobias: As of this date, these unclassified employees

would be made up of two kinds, people employed on an unclassified contract of some kind and GO Temp employees, who are not on that kind of contract.

Mr. Breaugh: Let me try it from the other side then. How many are on GO Temp?

Mr. Tobias: At any one time, out of this number, there would be about 1,500 GO Temps working. So you could reduce the number I gave you by about 1,500 and that would give you the number, unclassified, on contract.

3:20 p.m.

Mr. Breaugh: So there are roughly 27,000 contract players?

Mr. Scott: But notice the date. That is July 31. Of course, that is the peak period.

Mr. Epp: The height of the summer.

Mr. Scott: Some would be students, all unclassified.

Mr. Rotenberg: Do you have an April number so we can see how many were not students?

Mr. Tobias: Somewhere this report talks about this month's figure: an increase of 4,600 from the previous month, mainly attributable to summer students.

Mr. Breaugh: I am not getting very far with this, but I would like to try again to sort this out. I have no problem with the typical argument that we do not want people operating snowploughs in July. That is okay by me. I do not want people working in the parks in the winter when the parks are closed.

I am trying to figure out how many citizens are employed by the government on a contract basis. If we can sort out GO Temp and those people who do seasonal work for the government and get those two numbers out of the way, how many other people are employed by the ministries on a contract basis, doing what might be called regular work?

Mr. Tobias: The same question was asked in a slightly different way a little earlier in the proceedings. I believe we said it would be most difficult to try to determine those numbers. Perhaps Mr. Mancini asked the question. My comment at the time was that I do not know the numbers, but I would think they would be relatively small. There would be people on the kind of contract that was mentioned by the gentleman over there: continuous, long-term, renewed perhaps once or more. That would be a most difficult figure to determine.

Mr. Breaugh: The answer is, "We don't know."

Mr. Scott: Except that the examples here show that in July the unclassified staff numbered 28,000, and at the end of March it was 13,000. During the off-season or the nonpeak periods there would be considerably fewer than the 28,000 as of July 31.

Mr. Mancini: You ran that by us a little quickly. Would you please repeat the date and the number again; how it refers to the 28,000?

Mr. Scott: The report says that as of March 31, 1982, there were 13,509 unclassified staff.

Mr. Mancini: How many of those would be GO Temp?

Mr. Scott: As Mr. Tobias says, about 1,500; but it is not indicated here.

Mr. Breaugh: If we go at this in a slightly different way, if you look at page 39 of your annual report, we might get some concept that way because it does give us a longer breakdown period.

It is true that during the summer months there is a relatively high number of unclassified--for example, in July 1980 it was 27,964--but if we go to the winter months, it drops to around 13,500. If we take 1,500 GO Temp people out of the 13,500, we probably have 12,000 people on a contract basis.

Is everybody happy with having that many people functioning on a contract basis? From a management point of view, I would see a number of problems with having different players moving in and out of the ministry on a contract basis. The alternative to that would be to renew the contract; in which case, why are they on a contract; why are they not on a full-time basis?

Mr. Scott: For example, in the winter months there would be all the unclassified employees hired by the Ministry of Transportation and Communications for snow removal and so on. So when you talk about different people moving in and out, these people would be on and some of those would come back year after year in some cases.

In other cases, they would be employees of a project of a nonrecurring kind, a project that is going to last for six months or a year. They would be people hired for that specific project. But there is not sort of a wholesale movement of people out, changing on the same job, some people working this month and different people next.

As for the total number, I can only assume that the ministries have satisfied themselves that they need that number of unclassified employees. The numbers have not increased dramatically, if at all, in recent years.

Mr. Breaugh: That is interesting, given that we do not know what the number is.

Mr. Scott: We have indicated the number of--

Mr. Breaugh: In total, we know what?

Mr. Tobias: We know the number of non-civil servants working in the system.

Mr. Breaugh: That much we have, but in total we do not know how many people are employed on a contract basis by the ministries.

Mr. Tobias: With respect, I think the way the question has been worded is tending to mislead both of us. When you say people on contract, with the exception of GO Temp everybody else is on a contract of some kind.

Mr. Breaugh: Could I ask why we do not know that number and why we have not done an analysis of whether using people on that kind of a contract basis is cost-efficient and produces management problems?

I am familiar with this problem from an individual's point of view. The individual would obviously want to have a permanent job as opposed to being employed on a three-month basis. But from a management point of view, I think I would want to know whether that is cost-efficient, whether it causes management problems, whether it causes problems of continuity in the work place and a whole range of things.

Has the commission studied the effects of having such a large percentage of your work force employed on a temporary, contract basis? Have you researched that?

Mr. Scott: I am not aware that we have.

Mr. Tobias: There has been, to my knowledge, no specific research aimed at that. In what I think may be a related vein, in 1976 there were a significant number of people on contract who had been on contract for considerable periods of time. It was deemed that in fact those contract jobs were permanent jobs and they were converted to permanent civil service positions. To me, that would suggest a couple of things: one, that certain permanent work being done by people on contract was not correct and therefore it was changed and, two, that having done that, there was still a recognition that there was a place for people on contract and that mechanism has been retained.

It is a decision within the ministry, made by the minister or his designate, whether it be for seasonal purposes, whether it be to fulfil part-time working needs, and whether it be to fulfil requirements on one-shot projects, albeit a couple of years perhaps; but to fulfil those kinds of obligations or programs it seemed to be a satisfactory and cost-effective method of doing business.

Mr. Breaugh: But we have not examined that in any serious way. One of my particular problems with that basis is that I would want to know, for example, is it really cost-efficient; does it save you money? In my experience in municipal government and some in the private sector, one of the lessons we thought we learned was that bringing people in from the outside on a short-term basis was a very attractive piece of business, because it looks like your obligations are minimized and you are able to use expertise that you do not have on staff, except that in some of the cases we analysed we were really paying through the nose and we determined after a while that we were not terribly happy with that basis.

It happened less and less often unless we were really caught in a position where we just did not have people with the expertise to do that. By and large, the rule maintaining that the work be done in-house, so to speak, was probably just as cost-effective no matter how nice it looked on the books, because you did not have as many employees, you were not paying high prices and benefits and all that kind of stuff.

When you get right down to it, the use of consultants is a very expensive business, and the use of people on a contract basis often causes you problems down the line because their techniques are somewhat different or they produce a report that the remainder of your staff is not familiar with, so there were a lot of management operational problems with it.

I am really a little taken aback that you have not examined all of the ramifications of that.

Mr. Scott: I think, perhaps by way of explanation or comment, ministries are to a large extent allowed to run their ministries and to make the determinations as to which is the best way to use the money by way of staff.

Over the years, Management Board of Cabinet has made serious attempts to control the size of the classified public service, and there have been some actual reductions--not just reductions in the rate of growth but actual reductions in numbers.

3:30 p.m.

You raise an interesting question. I do not know what would be involved, whether it would be feasible for the Civil Service Commission or a central agency to conduct a study of all the unclassified staff and determine whether it was cost-effective.

Perhaps another way of going at it would be to ask each ministry to give a report as to whether they think it is cost-effective to use employees in this way, but to this point I am not aware that it has been done. It might be something that should be taken under advisement.

Mr. Breaugh: There are a couple of other areas I wanted to talk to you about. You said that you had 282 people on notice. How many people have you laid off?

Mr. Scott: Employees on layoff and recall at the moment: 32.

Mr. Breaugh: So out of a work force of usually around 70,000 people you have laid off 32.

Mr. Scott: Yes.

Mr. Breaugh: Do you have a breakdown of what classifications they would be from?

Mr. Scott: Twenty-seven are bargaining unit employees.

Mr. Breaugh: So there are five middle-management or management people.

One of the things that surprised me somewhat, quite frankly, was that when the union people were here they said there was no patronage left in the Ontario system any more.

Mr. Charlton: They were only talking about government.

Interjection.

Mr. Breaugh: My judgement would be that there has been an attempt at least to cut it down to reasonable proportions. But let me use a couple of specific examples. In anything to do with the Liquor Licence Board of Ontario or the Liquor Control Board of Ontario it seems to be very difficult to put it on a basis where you apply for a job as you would anywhere else. Have you been successful, in your view, in controlling that?

Mr. Scott: The Civil Service Commission has no authority over the hiring practices of the LCBO or the LLBO. It would be the responsibility of that board. We do not get involved in that.

Mr. Breaugh: But in other ministries--for example, the Ministry of Natural Resources does a lot of hiring of seasonal unclassified workers, and it is reputed to be the case that in many parts of Ontario you get that job through the local Conservative member. Are you reasonably happy that this really does not happen, that this is a myth perpetuated by New Democrats and others?

Mr. Scott: I speak only to those people who are hired through the Civil Service Commission, and I would like to think it is true that it applies to ministerial appointments as well. But as you recall, under the act the minister has the authority to appoint the unclassified staff; so I cannot speak to those. I just hope that would be the case.

I know that for the hiring of unclassified staff it has been the complaint of many cabinet ministers that for them to recommend someone is the kiss of death, because the Civil Service Commission does not seem to hire any of the people they recommend. So I think I can say that--

Mr. Breaugh: That is for the classified staff?

Mr. Scott: For the classified staff. So, with respect to the hiring practices of the Civil Service Commission, I would say it has disappeared.

Mr. Breaugh: You have such a polite way of saying it: the minister retains the right to appoint staff.

Mr. Scott: Unclassified staff, yes, under the Public Service Act.

Mr. Breaugh: So patronage really is not dead; it is just suffering a setback.

Mr. Scott: I also said I assume it is dead; it just does not happen any more.

Mr. Breaugh: I am afraid rigor mortis has not quite set in, though.

One other area where I think in most jurisdictions in Canada we are moving with glacial speed to solve a problem is that old bugbear of political rights. As you look across Canada, everybody has a problem with this; no one seems to have the definitive answer on it. Maybe British Columbia does, but in most other jurisdictions we are still muddling around with funny ideas about it.

Why is it not possible to identify that handful of civil servants who really should not be involved in the political process, say it out front, and then say to everybody else, "You are citizens like any other citizens, and because you work for the government does not mean you lose your political rights"?

Why do we make such a complicated issue of that? It seems to me it is a relatively simple matter, that there are some people who work for the government who, because of the nature of their positions, should not be involved in the political process, and for everyone else it is by and large irrelevant. Why do we not do that? Why is there so much regulation written and so much fuss and bother about it?

Mr. Scott: I will have to hedge my answer on that again as a civil servant. That is a political decision.

Mr. Breaugh: You see, you are even afraid to answer the question.

Mr. Scott: No, I am not afraid; I am just hedging my answer. I am going to answer.

Naturally, it is the Legislature that decides which restrictions, if any, will appear in the legislation. I can only offer an opinion as to why the restrictions continue to exist in most jurisdictions in Canada and what the purpose of the limitations is, which is to ensure that public servants are first seen as being impartial and not supporting one political party or the other.

To give some of the examples I have heard used, it would raise concerns in the minds of the public if a public servant were out on the hustings at night not only supporting the policies of one particular party but also thereby perhaps arguing against the policies of the party in power, and then the following morning he has to come in to work and do his best to be seen implementing without any reservations the policies he was criticizing the evening before.

Mr. Mancini: That is a very good answer.

Interjection: You are hedging.

Mr. Scott: No. This is a real problem that the chairman referred to, the examples of what might happen. I hope it would not

happen that a supervisor would take it out on the individual, but it is a real problem for an employee to be out supporting one party and arguing against the policies of the party in power.

Mr. Charlton: On the other hand, having worked as a civil servant for a number of years, I recall that the public seemed to distinguish quite clearly when you were talking to them about something they disagreed with, that you were just doing your job, it was somebody else's policy and you did not really necessarily believe it. You were implementing what you were told to do. You are a working person, the same as anyone else. That is generally the view I got from taxpayers at the municipal level in one of the most controversial areas that exists, which is property taxes: "I know it is not your fault. You are just doing what you are told."

Mr. Scott: But in attempting to answer that, it is one of the real problems seen by governments, not just in Ontario but in other jurisdictions as well.

With regard to the other question of why you do not just say, "Okay, these senior people cannot participate, but others can," schedule 2 really is a very limited list, and it includes people at the level of director and above. I do not know any exceptions to that, although at one time there were. You commented, Mr. Charlton, the other day about the number that were taken off this list. It has been a policy of the government in recent years to reduce that schedule 2 to the barest minimum, and it is quite a short list at this point. It used to be much longer for the reason I have mentioned.

The intent of the Legislature, as I understand it, is to put as few restrictions as possible and to restrict as few people as possible. So this list is kept to a minimum, and those people cannot participate in any kind of political activity. But for the others you are in the position where you have to pick and choose and try to differentiate between those people who are allowed political activity; their jobs are not very sensitive, but this job is sensitive. It becomes, again, a very difficult decision.

Mr. Breaugh: What I see as the silliness of it is that every time there is an election, somebody puts a notice on a bulletin board that the teachers at Durham College cannot canvass or that somebody at Whitby Psychiatric Hospital cannot go out and be part of the political process. Then I see guys like Hughie Segal appearing on nationwide television giving their august opinion on this, that and the other thing.

Why are there such widely different sets of rules? The minions at the bottom are warned, on fear of losing their jobs, that they cannot put a sign in their car window. I really do not have any objection to people at the top level appearing in public on behalf of the Conservative Party or doing whatever they want to do; I do not see any real problem with that as long as they do not violate the code of secrecy or whatever that process is. Why is there such a real problem around that?

It seemed to me the union made a reasonable argument that a lot of its members are a little disturbed about it and it is causing

a problem. From your point of view, if we identified the 5,000 people who should not be involved in the process and said, "Everybody else has full rights like the rest of the citizens of Ontario," would it really cause the commission a whole lot of problems?

3:40 p.m.

Mr. Charlton: I do not think they correspond. I will just add something to that and you can respond to it all at once. You said in your comments that it is difficult for the public to see the civil servant who last night was speaking out against a policy and today is trying to implement it. That particular aspect of political activity is expressly forbidden by the oath of office that all civil servants take when they get their job.

In other words, if you removed all of the restrictions on political activities, the civil servant would still be restricted from talking publicly about his job and the things he learned on his job, by the oath of office. That would still leave him free, though, to participate in any other political activity he or she chose.

Mr. Treleaven: Might I interrupt? It is a point of order. I believe that Mr. Charlton took a supplementary on Mr. Breaugh's question. I believe Mr. Breaugh is asking these gentlemen for an opinion as to the propriety of the conduct of particular individuals specified.

Mr. Breaugh: No.

Mr. Treleaven: I heard Mr. Segal's name mentioned. I question the propriety of asking them this question.

Mr. Breaugh: You have the question, now answer it.

Mr. Scott: My answer was going to be that I would not answer that particular question. You are asking what problems it would cause for the Civil Service Commission. Really, that is not the concern. I think the question should be, what problems would it cause for the Legislature and the party in power who would have the power to change the legislation.

It is a political question that has to be answered, not what does it do to the Civil Service Commission, or how would I or the chairman of the Civil Service Commission react if the legislation were changed. If the legislation changed, we would live with it. I was attempting to give you my personal observations as to why legislation exists in Ontario and other provinces. But I cannot defend or say, "Yes, it will be okay," or, "It is no concern of the commission."

Mr. Breaugh: In your daily work, though, it really would not make a lot of difference, would it?

Mr. Scott: Again, I do not think I should comment on how the change of legislation would affect the Civil Service Commission.

Mr. Breaugh: I will leave you alone since you give me no information anyway.

Mr. Epp: May I ask a supplementary?

The Vice-Chairman: Yes, if you ask a supplementary on that, I would allow you.

Mr. Epp: On the same subject, one of the top civil servants in the last election was appearing in political ads of one particular party. Was that discussed with the civil service commissioners to see whether or not it was appropriate for civil servants to appear in political ads? Or is this condoned by the Civil Service Commission?

Mr. Scott: I am not sure whether that particular situation was discussed with the chairman of the Civil Service Commission. I do not think it is a practice for civil servants, nor should it be a practice for civil servants, to appear in the ads. I think I know the one you are referring to. Someone walks on camera and I do not know whether the person walking on camera was making one of his 30 or 40 trips that he makes into that office in any given day or not, but certainly a civil servant should not make a practice of appearing in political ads.

Mr. Epp: The reason I asked that, Mr. Scott, and I know you do not have any control over it, is that I am wondering whether that is setting a precedent for the other civil servants. For instance, if anybody else in the province now decides, as a civil servant, that he wants to appear in ads, to what extent can he appear in ads and to what extent can he not? Can he walk on camera and walk off, can he be there 10 or 30 seconds, can he just show his back, does he have to wear a pin-striped suit or not wear a pin-striped suit?

All these questions come up. I thought it was a very bad precedent, but the precedent has been set. The person still has his job. He earns a good salary and everything else, yet nothing has been done about it. I presume if any other civil servant in the province now decides to appear in political ads, it is quite safe to do so.

Mr. Scott: No, I don't think that is a fair assumption, and I don't know what discussion took place, if any, between the chairman of the Civil Service Commission and the senior civil servant you are referring to. My personal reaction is that the Public Service Act does not distinguish between levels of civil servants. The limitations apply to all civil servants.

If any civil servant were to call me and ask for my advice as to whether or not he should or could appear with impunity in political ads, I would advise him that I think he would be wise not to appear in political ads because he would be coming up against the provisions of the Public Service Act.

On the other hand, I am also not aware that if anyone should conduct himself in such a way, or take part in political activity, he would be immediately dismissed. I think there are some gentlemen

in this room who are familiar with that. It is not an automatic dismissal if someone participates in political activity but in some situations they would be advised, "We think you should not because of the provisions of the Public Service Act." That should apply to civil servants at all levels.

Mr. McLean: Mr. Scott, if I could go back to that earlier question, perhaps I could give you a little more detail and try to find out a little more. In this case it was a registered nurse's position. I would presume that all registered nurses have to have a certificate. They are all qualified. The case, in fact, is that it was a contract position that was made a full-time position.

I wonder if somebody would be hired over another when they are all registered, all qualified. The thing that most disturbs me is that the one was a single parent with two children who was on a contract for two years, and the one who got the job was a high school teacher's wife.

Here we are with somebody in society who needs a job to keep off the welfare roles, keep off mother's allowance, and what the civil service is doing is putting somebody on mother's benefits or family allowance or welfare and giving somebody a job who does not need it, in my opinion. I fail to understand how, when people go through four years of nursing and have a certificate, they can say one is better than the other, who has not worked for them before.

Mr. Tobias: Mr. Chairman, I think there are a couple of things I might be able to help with here. One is that while from a personal point of view each of us as individuals could look at someone's need for employment and feel total sympathy for that need, if in the administration of our staffing policies we took need into account, then we would be playing havoc with the merit principle, because it becomes then almost a value judgement as to how much need and how much merit will be the formula for appointing a person to a position. So on that basis, introducing a factor of need would in fact destroy the basis upon which the merit principle is founded, in my opinion.

Second, on the question of the nurse who was a principal's wife, I think perhaps what is most relevant is whether or not that person was qualified and had the same kind of diploma or degree or experience as the person who was doing the job on contract, and whether the person who was appointed was in fact better qualified than the person who was doing it. If the person appointed was not properly qualified, then that would certainly give us cause for concern. But if she was qualified and could be shown through the requirements of the position to be better qualified than the person who was doing it, while we could be full of sympathy for the lady losing her position, that is an appropriate selection decision.

Mr. McLean: How do they determine she is more qualified if she has not worked for them before and the other has? There was no problem with her duties.

3:50 p.m.

Mr. Tobias: The fact that the lady who was doing the job

was not selected is not necessarily a reflection on her ability or competence, and the fact of a person having worked on a job is not necessarily always the only way to determine her qualifications. We go through this all the time. Most people who have employed people in the past do not always have the privilege or the benefit of being able to hire somebody who has worked for them before.

Mr. McLean: So what you are saying is that common sense does not count any more; whoever can write the best essay and give you the best presentation is the one they think should have the job.

Mr. Tobias: With respect, I do not think that is what I said.

Mr. McLean: No, I know that is not what you said but it would appear to me that is the way it is being done.

Mr. Mancini: Are you all done?

Mr. McLean: I think I have said enough.

Mr. Mancini: One of my colleagues on the committee mentioned some political activities on the part of Hugh Segal and thought it was highly inappropriate that he should be allowed to partake in political activities and other civil servants not be allowed, and I have to concur with him 100 per cent.

I am also concerned about the activities of another senior civil servant, the deputy minister to the Premier, Mr. Stewart, who I believe took part in an election ad which my colleague, Mr. Epp, referred to. I would like to ask some further questions on that and I thought Mr. Epp's questions were quite good. I would like to go over some of that information again.

I believe you said, Mr. Scott, that you would not encourage any civil servants to become part of political advertisements. I believe that is correct. Have you sent a letter or had any correspondence or any conversations with Mr. Stewart about him being part of a political advertisement?

Mr. Scott: No, and I normally would not. There may have been discussions between the chairman of the commission, Mr. Waldrum, and Dr. Stewart, but I am not aware whether those actually did take place or what was discussed if they did.

Mr. Mancini: You mean a person of your executive position would not be consulted by the chairman as to what action would be taken concerning a matter like this.

Mr. Scott: Again, not necessarily, and I would not think so in the case of a discussion between Mr. Waldrum and Dr. Stewart.

Mr. Mancini: Would any of you three gentlemen be asked to discipline civil servants if they were involved in political advertisements?

Mr. Scott: No. The staff of the Civil Service Commission would not attempt or have any right to impose the discipline on

employees. The act states that a violation of any of its sections is grounds for dismissal. I think if it were brought to our attention that certain questionable actions were being taken, then the supervisor or perhaps even the deputy minister of that ministry where the person was employed would be advised to discuss the matter with the individual.

I would only offer advice if an individual called and said, "What do you think of this kind of activity?" If it came to a question of discipline, I think the ministry concerned would speak to the individual and take whatever action it thought was required.

Mr. Mancini: Maybe I started in the middle. Let us back up a little. What section of the Public Service Act prohibits civil servants from taking part in election campaigns and could we have that read into the record? I believe the one I am specifically after is section 14.

Mr. Scott: Would you like me to read all of the sections?

Mr. Mancini: I would like you to read the section that would, in your view, specifically prohibit a civil servant or, for example, a civil servant in my riding who would favour my re-election, from being able to take part in a television or newspaper advertisement, that type of thing.

Mr. Scott: Nothing will refer to those specific matters, but let me read section 11, which is the first section.

"A crown employee, other than a deputy minister or any other crown employee in a position or classification designated in the regulations, may be a candidate for election to any elective municipal office, including a member or trustee of an elementary or secondary school board or a trustee of an improvement district, or may serve in such office or actively work in support of a candidate for such office if,

"(a) the candidacy, service or activity does not interfere with the performance of his duties as a crown employee;

"(b) the candidacy, service or activity does not conflict with the interests of the crown; and

"(c) the candidacy, service or activity is not in affiliation with or sponsored by a provincial or federal political party."

Subsection 12(1) reads:

"(1) Except during a leave of absence granted under subsection 2, a crown employee shall not,

"(a) be a candidate in a provincial or federal election or serve as an elected representative in the legislature of any province nor in the Parliament of Canada;

"(b) solicit funds for a provincial or federal political party or candidate; or

"(c) associate his position in the service of the crown with any political activity."

Subsection 12(2) reads:

"(2) Any crown employee, other than a deputy minister or any other crown employee in a position or classification designated in the regulations under clause 30(1)(u), who proposes to become a candidate in a provincial or federal election shall apply through his minister to the Lieutenant Governor in Council for leave of absence without pay for a period,

"(a) not longer than that commencing on the day on which the writ for the election is issued and ending on polling day; and

"(b) not shorter than that commencing on the day provided by statute for the nomination of candidates and ending on polling day,

"and every such application shall be granted."

That is not a limitation but rather a provision to grant leave of absence. I do not know if you want subsection 12(3) read. This indicates what happens when a person is elected and reappointed. Do you want that read?

Mr. Mancini: No. I want to get to the point where it states in the Public Service Act that public servants are prohibited from taking part in election campaigns.

Mr. Scott: Section 11 was that part with respect to municipal. In section 13, it says:

"(1) A civil servant shall not during a provincial or federal election canvass on behalf of a candidate in the election.

"(2) Notwithstanding subsection 1, a deputy minister or any other crown employee in a position or classification designated in the regulations under clause 30(1)(u) shall not at any time canvass on behalf of or otherwise actively work in support of a provincial or federal political party or candidate."

Mr. Charlton: That is the one.

Mr. Mancini: That is the one: "actively work."

Mr. Scott: The next one might apply.

"14. Except during a leave of absence granted under subsection 12(2), a civil servant shall not at any time speak in public or express views in writing for distribution to the public on any matter that forms part of the platform of a provincial or federal political party."

Mr. Mancini: Mr. Scott, I do not want to interrupt you--

The Vice-Chairman: Subsection 13(2) which talks about actively working: That is only for deputy ministers and designated employees. That is not for everybody.

Mr. Scott: That is correct.

Mr. Charlton: That is Stewart.

Mr. Mancini: Yes, that is the person I was referring to.

The Vice-Chairman: That section is for deputy ministers and designated employees.

Mr. Mancini: They are not allowed to do that.

The Vice-Chairman: You mentioned about a civil servant in your riding. It may not apply to a civil servant in your riding.

Mr. Mancini: One of those other sections would take care of that. I think I have the area I was looking for. I assume that "actively work" would cover a television commercial.

The Vice-Chairman: Mr. Mancini, with respect, I do not think that is a fair question.

Mr. Mancini: It is, Mr. Chairman, because although I believe in principle that civil servants should not work in election campaigns--I could give you many reasons why--and I support that principle very strongly, I have many civil servants in my riding who wish to work for my re-election during provincial campaigns. I find it very difficult to swallow the fact that they are not allowed to support my re-election, but yet the top civil servant in the province is allowed to--

4 p.m.

The Vice-Chairman: I am not commenting on whether you are correct or incorrect. I am just questioning whether or not a person in Mr. Scott's position should comment on an interpretation of the act with regard to a specific case. That is all I am questioning. I am not questioning your right to bring it up, but to ask Mr. Scott for that kind of opinion.

Mr. Mancini: Mr. Chairman, Mr. Scott might have to deal with a civil servant in my riding at a particular date in the future. If a particular civil servant in my riding had happened to make a television commercial with me, and Mr. Scott felt, in consultation with other senior people, that he or she should be fired, I want to know how that could be fairly weighed against what Mr. Stewart did during the last election. I want to know how we can fairly explain this to the civil servants we happen to represent. I find it highly offensive that the Civil Service Commission and people in your position seem to have turned a blind eye on what Mr. Stewart has done.

Mr. Scott: I am not agreeing that we have turned a blind eye. In response to your earlier question I said I am not aware of what discussions took place between the chairman of the commission and Dr. Stewart. I know there was a letter written to the chairman of the commission complaining about that activity and I believe the chairman did have discussions with Dr. Stewart, but I was not a

party to that conversation so I cannot comment on what took place.

Mr. Mancini: Would you undertake to get that information for the committee?

Mr. Scott: Yes, I will ask Mr. Waldrum if he had such discussions.

Mr. Charlton: Could I have a supplementary? My understanding of the process of the administration of the Public Service Act, especially around these sections, is that it is in fact the deputy minister who would take action upon becoming aware of it. That has been my experience with the act. In a case like Mr. Stewart's where he is in fact the deputy minister, who would be responsible to take up the issue?

Mr. Scott: That is a very good question. Certainly I can say it would not be my role. I think I will let that lie right there.

Mr. Chairman: Your complaint here is that he had appeared in a political ad during an election?

Mr. Mancini: Subsection 13(2) of the Public Service Act states that no employee shall actively work for a candidate or a party, and I support that principle. However, we had Mr. Stewart take part in a television commercial. I was wondering how we would square that with the potential of public servants helping me for my re-election. I find a lot of difficulty squaring that.

Mr. Chairman: The commercial you are referring to shows a picture of the Premier and members of the cabinet and Mr. Stewart delivering a message. It was an example of the activities of the Premier and the government and the members of cabinet. I do not know if they caught any other civil servants sitting around the room, but that is part of the function of a session of cabinet. I am just wondering how it comes within the terms of this particular section.

Mr. Epp: That is a government function, George, it is not a political function.

Mr. Chairman: I know, but the idea was to explain. It is like Mr. Trudeau taking a helicopter and going to a picnic up around St. George or something. Are you going to crucify the helicopter pilot?

Mr. Epp: The helicopter pilot is not on the political set.

Mr. Chairman: But he is a civil servant.

Mr. Epp: Yes, if you are going to start using him in a supportive role, I agree with you that he should not be there.

Mr. Scott: I suppose it is an analogy to your earlier question, could your constituents make a television commercial on your behalf? Following up what the chairman has just said, if films were being made of you in action and some of your constituents were there and one happened to be a civil servant who was caught by the cameras, if anyone were to ask me if that civil servant was in

violation of the Public Service Act, my answer would be "No." But if he was out working on their behalf, that is a different matter.

Mr. Epp: Pardon me, Mr. Chairman, but you are talking about apples and oranges, in a sense. You are talking about generally panning a camera someplace in public where somebody happens to get caught and you are talking here about a set.

Here is the camera set and Mr. Kerr wants to get a picture of everybody here. You deliberately have a civil servant coming on camera. I am sure that if Mr. Stewart in this case had not had permission to come on camera at that particular time, the Premier would have rapped his knuckles and said, "Ed, get the hell out of here," or something like that. "You are not supposed to be on here." But the Premier obviously gave him permission to come on.

It goes right back to number one. Let's not play games about the thing. Everybody knows he came on at that particular time.

Mr. Treleaven: Mr. Chairman, we are into a hypothetical situation. Mr. Epp has just said, "Everybody knows that..." Everybody does not know that. You are taking a bit of a hypothetical witch-hunt here to ridiculous extremes. May I refer to Mr. Scott? When he talked about civil servants, Mr. Scott said, "It would be unwise to...", "If I were asked for my opinion that...", and he answered, "It would be unwise to take part in political ads."

Before you go winding off into Alice in Wonderland, ask him to define "take part in." There are two extremes. There is the shilling and the camera. You are trying to make whatever this ad is, and I did not see it, that Dr. Stewart was apparently in--

There are two extremes. You can shill in front of the camera and say, "Vote Liberal." Was he standing there saying, "Vote Liberal," "Vote NDP," "Vote Tory"? That is one extreme. Or is it a crowd scene? There is the other wild extreme where there are 1,000 people and he is one of the 1,000 people. You have got something in between, I assume.

Mr. Epp: It was in the cabinet room.

Mr. Treleaven: Fine. Do you know the conversations and the camera sets and all this, that it was a setup and that he was an actor in the scene? Of course you do not. You are into Alice in Wonderland. Get back to the man and ask him for some definitions before you start tying his tongue up.

Mr. Epp: Okay. Just one short thing: You know and I know that cabinet sessions are not public--

Mr. Treleaven: Yes.

Mr. Epp: --that you do not open up the cabinet for the public to come in and see the discussions. If they did, they would be there tomorrow morning and they would be there on other occasions. It is a very private session.

Mr. Treleaven: Not normally public.

Mr. Chairman: There is no dialogue in the ad, it was a picture of a function of government. That is all it was. It lasted about 15 seconds.

Mr. Treleaven: It is exactly the same thing as the caucuses of the different parties being not generally public, but we have each had examples over the last year where noncaucus people have been invited for one reason or another into all three caucuses. Therefore, "not generally public" is fair enough. Now go on from there.

Mr. McLean: Mr. Chairman, I would like to pose a question to Mr. Scott and comment about what Remo has said. If you were a candidate running for election and your wife worked as a civil servant, would you, as a candidate with your wife and family handing out brochures at functions, say the wife was in the right or in the wrong as a civil servant, working every day, to be with her husband at different functions in the evening?

Mr. Scott: Again, it would depend on the--

Mr. Chairman: That would contravene section 13 of the Public Service Act.

An hon. member: Sure it would.

Mr. Chairman: No question about that.

Interjections.

Mr. Chairman: Section 13 says they shall not canvass on behalf of the candidate or actively work in support of a provincial or federal candidate. The Stewart incident does not come within that in any way, shape or form, really. He probably did not even get paid. He is not getting any royalties out of the damned thing. It is unfortunate.

4:10 p.m.

Mr. Mancini: We have a disagreement here.

Mr. Chairman: The next item? Or are you going to carry on?

Mr. Mancini: Yes, I am going to carry on. I want to talk about red-circling of employees. Could you inform us how many employees have been red-circled or are red-circled up to the last statistics you have?

Mr. Jackson: I do not know whether we have the actual figures, but that is a figure that can vary from time to time because the application of salary protection, commonly called red-circling, can occur under a number of different circumstances. When an individual's position, for no reason of his own, is reclassified downwards, he gets salary protection. There are a number of other instances. I can get for you the number that existed as of the end of last month, but that figure would change.

Mr. Mancini: Yes, I think that would be interesting.

Mr. Jackson: I should explain--perhaps I went over it too quickly--it really is a policy on salary protection that protects an individual for circumstances that are not his or her own fault. It is primarily when a position is reclassified downwards and it is not the individual's fault. It can happen because of reorganization and that sort of thing. So it is there to provide salary protection to the individual.

The way it works is that the individual is entitled to proceed to the maximum of the salary range of his classification as it existed when the change took place and then has to wait at that salary level until the salary level of the new classification surpasses it. It is really to say that the expectation of the individual, when he was in a particular classification, is not changed, even though he is then demoted or moved to a lower position and eventually may be entitled to increases once the salary range moves past. We can get the number for you.

Mr. Mancini: Are there 13 bargaining units? Or nine?

Mr. Scott: No, under the law there is one bargaining unit represented by OPSEU. The whole public service constitutes one bargaining unit and, for ease of bargaining, we have divided the service into 10 separate categories of related jobs for bargaining purposes.

Mr. Mancini: Okay, so there are 10 sub-bargaining units. Are we all settled up? Have contracts been signed for the 1982 fiscal year?

Mr. Scott: All 10 salary contracts have been resolved and signed.

Mr. Mancini: What has been the average percentage increase for the 10 bargaining units?

Mr. Scott: I will express it in two ways. The cost to the payroll--I am going from memory but I can get those numbers--was 11.5 per cent, because in all cases the increases were staged--so much on January 1 and then another increase effective in May, June, July or some time later. The overall increase in average salary during the term of the agreement was about 12.5 per cent.

Mr. Mancini: Okay, could you tell me what the dates are for the contract settlement? Does it go from April 1, 1982, to March 30, 1983?

Mr. Scott: No, all 10 contracts expire on December 31 of the year, so eight of the current contracts were renegotiated and will expire on December 31, 1982, and two of them were two-year agreements which are scheduled to terminate December 31, 1983.

Mr. Mancini: Did their settlements exceed the 12.5 per cent for the two-year terms?

Mr. Scott: No, they did not. They were somewhat lower.

Mr. Mancini: Was it 12.5 per cent per year for two years or 12 and 10 per cent?

Mr. Scott: It was somewhat lower in the second year than in the first year.

Mr. Mancini: It was? What would happen to these agreements if the Ontario government instituted its nine-and-five program?

Mr. Scott: It would depend on what the legislation said with respect to second-year agreements.

Mr. Mancini: You would not necessarily think it would affect this particular year, would you?

Mr. Scott: I have no idea. It is up to the--

Mr. Mancini: We are at the end of September. That is only three months away from the expiration.

Mr. Scott: I cannot comment on it.

Interjections.

Mr. Mancini: I do not know. I read a headline in the Toronto Star that it was from nine to five over--

Mr. Scott: Like everyone else, I shall have to wait to see the legislation.

Mr. Charlton: You are asking a hypothetical question.

Mr. Mancini: So it is 12.5 for this year and two out of the 10 units are tied in for a second year. When the federal government, I believe in 1976, instituted wage and price controls all across the country, I guess that affected already settled contracts and affected our own people here in Ontario too. Were their salaries rolled back, or did the federal government's wage and price controls affect them the following year?

Mr. Scott: We were in the process of bargaining when the controls came in. In fact, it was in October, the fall of the year, and in negotiating the contract for the following year, because of the legislation, the unit went to arbitration in each case. The arbitrator made the ruling, and I think in each case the award of the board exceeded the guidelines imposed by the federal legislation, and in each case they were rolled back by the Anti-Inflation Board to the appropriate number.

Mr. Mancini: Yes. If we have a nine-and-five program here in Ontario, starting, say, on January 1, 1983, how would you negotiate with the civil service?

Mr. Scott: Again that would depend on how the legislation is worded. We will have to wait and see what it says.

Mr. Mancini: Let us talk hypothetically. If it said nine per cent the first year, and so you went in and made a contract

arrangement with the civil service, then I guess they could take it to arbitration again and possibly have an increased settlement. Who would roll it back then?

Mr. Scott: Again that would depend on the legislation, as to whether they would permit matters to go to arbitration, or whether it was just a flat amount. That is what it is; it "shall not exceed," either at negotiations or through arbitration. As I say, it depends entirely on how the legislation, if any, will be worded.

Mr. Mancini: I think I am finished, Mr. Chairman.

Mr. Chairman: Mr. Treleaven?

Mr. Treleaven: No, that is fine, thank you. I said what I was going to say as a supplementary.

Mr. Edighoffer: From the report that you read from Mr. Waldrum, on page 4, you said there is also a senior appointments and compensation branch which provides policies, programs and services solely concerned with the recruitment, compensation and development of those public servants filling executive positions in the Ontario government. What really takes place in this branch and how many executive positions are they involved in? Are they involved in all, setting up the requirements, or what is their role?

Mr. Scott: Mr. Hansen has just taken a seat beside me. He is the executive secretary of that branch. I shall ask him to give you that information.

Mr. Hansen: The branch is responsible for classification of executive positions within the public service. You can break that into two categories. The executive positions within the civil service proper are classified within an executive compensation plan. It is a five-level plan. These classifications are approved by the chairman of the commission.

There are also some executive positions in agencies, boards and commissions. The policy of the government is to control the salaries in agencies, boards and commissions generally by slotting the senior executive positions into the same executive plan we use for the civil service.

What we do with the positions in agencies, boards and commissions is review them using the same classification plan, but then making a recommendation to Management Board of Cabinet that the position be classified at a certain level to set the salary of the position.

4:20 p.m.

Mr. Edighoffer: The reason I asked this was that I saw an ad in the Globe and Mail very recently for the president of what I believe is called the Resource Machinery Technology Centre in Sudbury. I just wondered whether you would have any input, because it states in the ad:

"As the centre's founding president, your challenge will be to

build a centre from scratch, install a top-notch management team and, most important, establish excellent communications with the resource community. And, of course, you will play a critical role in Ontario's future."

I just wondered whether your branch would have any input into making up the pay package etc.

Mr. Hansen: No. That position is further removed from any of the positions we have anything to do with. Our branch has had nothing to do with that at all.

Mr. Breaugh: So we will not see Ward Cornell creep in as president of that corporation as his next field.

Mr. Hansen: The appointing is a different process from the classification, and I certainly have no idea what is happening on the appointment.

Mr. Breaugh: I was just thinking that he is probably as well qualified to handle that job as he was for his current position or his previous one.

Interjection.

Mr. Chairman: Are there any other questions? Mr. Scott, possibly you touched on--I am sure you did--the Ontario Public Service Employees Union's submission in respect to freedom of political activity. I do not want to embarrass you in any way, but I was just wondering: As executive director of the staff relations division, have you had any problems with the legislation as it exists? Have you had any individual complaints regarding members of the civil service being politically active who had to be disciplined?

Is there a feeling within the civil service that this is hamstringing them in some way or is a very onerous bit of legislation that is unfair and discriminates against them? Or, as somebody suggested, do you feel that possibly the legislation tends to protect those civil servants and gives them a reason, in spite of their political affiliation in an informal way, for not becoming active?

There are some substantial suggestions for changes, but in the light of the fact that many provinces have similar rules--and I know you have answered some of the questions and points that were made--what do you feel about it? Do you feel the legislation is reasonable? Should we amend it? If so, in what way?

Mr. Scott: Again, Mr. Chairman, I give a personal view or feeling. I do not have the feeling that there is any widespread concern among public servants over the legislation. I think many public servants when they join the public service perhaps recognize, as I did, that certain things have to go by the board, that there are certain activities they cannot participate in.

I say there is no general feeling, but from time to time there have been cases--I do not know the number, but I would guess no more than half a dozen or so in the past two or three years--where public

servants have wanted to become actively involved, let us say including members of this committee, in political activity. Questions did arise, and these people were advised that they could not participate in this particular activity unless they resigned from the public service.

There have been a few examples of employees who ignored the advice given by the authority within the ministry and ran for elected office in a municipality. In one case that comes quickly to mind--it was not Mr. Charlton--another assessor, I think in Port Colborne, ran and was elected to council. The ministry took the position that the employee could not serve two masters, that he could not be a councillor in the community in which he was assessing the property and still do justice to a job for the crown and as an elected official. That person was dismissed.

The grievance was taken to the grievance board, and it had a happy resolution. The board agreed the employee was in violation of the act and could not serve two masters in that particular occupation; but before the hearing was over the ministry offered a solution and suggested that if the employee were to take an assignment in another community and do his assessing in another community, they could live with that. So that, I think, was an indication that there is some flexibility within the service. The employee agreed and everyone went away happy. He was transferred to another community not very far from his home base. That was the solution to that.

Another case comes to mind of a crown attorney in Ottawa who wanted to stand for election. In that case the individual was on schedule 2 because of his position as a crown attorney, and he was given the option of resigning or continuing as a public servant. I know that he did not actually resign--

Interjection.

Mr. Scott: Eventually did resign.

Mr. McLean: Mr. Scott, could I ask you a question?

Mr. Scott: Just to finish off: There have been some cases, but I do not have a feeling of there being widespread disenchantment with the legislation.

Mr. McLean: You know that far better than I do. One question: If my riding secretary wanted to run for council and was elected, could she still be the riding secretary?

Mr. Chairman: Sure. She is not a civil servant.

Mr. McLean: No, but her pay comes from the government.

Interjections.

Mr. McLean: So the answer is yes. She is not--

Interjection: Sure, she is.

Interjection: She can get elected if she runs.

Mr. Charlton: Are you familiar at all with the case in Thunder Bay? I cannot recall the gentleman's name.

Interjection: MacAlpine.

Interjection: Mr. McKay?

Mr. Charlton: Yes. What was the outcome of that case?

Mr. Scott: That was a different decision of the board. In that case the board ruled that we would have to wait and see until a conflict occurred between his duties as, I think, president of the riding association and his job as crown. Others have said, "You do not have to wait until a conflict occurs." If there is reasonable expectation or the probability that a conflict will exist, they will say, "You cannot serve two masters." So we have had two different rulings. In that particular case the individual left the public service and went into law school; so the issue disappeared.

Mr. Charlton: Yes, I was aware he had left. I just was not aware of what--

Mr. Scott: Yes. There were two different decisions. In that case the board ruled that a conflict had to occur in his duties as president of the riding association.

Mr. Breaugh: What protection do you think is in the act for a civil servant not just to voice an opinion but to share information? I guess the MacAlpine case would be one instance where someone lost his job because he talked to a member of the Legislature. There are also other occasions I can think of where ministers gave directives that agencies and civil servants out there were not to speak to members of the Legislature without some vetting or censoring process.

4:30 p.m.

Is there sufficient protection in the act? My judgement would be that there is not. But is there protection in there for people who think they are simply doing their job, which is to gather information on certain kinds of programs that are under way? It strikes me that if we followed the British model, a civil servant would feel very comfortable talking to any member of the Legislature, whether or not the minister particularly liked his doing that.

Mr. Scott: When you say "protections under the act," the act does not speak to or set out protections for an individual who engages in that kind of activity. There is the oath of secrecy, of course, that you cannot divulge this information. But, as far as speaking to a member of the Legislature is concerned, I would say that the grievance procedure protects an employee.

In other words, if a ministry or a minister takes action against an employee that is considered improper or inappropriate, then that employee has the right to grieve against that action. If a

penalty is imposed, be it a suspension or a dismissal, certainly every employee has the right to grieve that suspension or dismissal.

Mr. Breaugh: Not every employee. For example, contract employees would not have the protection of the bargaining agent on their behalf, because they are not members of the union.

Mr. Scott: I think there you would have to resort to the protection provided by the courts. In other words, if there were a breach of contract--

Mr. Breaugh: One of the things I find to be somewhat obnoxious is that it seems to be a bit of a trend now that ministers are deciding on their own that they do not want their people to talk to other members of the Legislature. Members have been excluded from visiting certain institutions.

There does not seem to be a lot of sense about the practice either. Some civil servants feel quite free in that they will answer a question from me as they would from Joe Public out there, who calls him up and asks how many people work there, how many patients you have, or what this is program doing. There seems to be no problem. Yet, on the other hand, there seems to be an increasing number of occasions when they refuse to answer and I am supposedly to go to the minister's office to get that answer. That is one of my frustrations.

I tend to think that if there is someone out there running a hospital, a psychiatric institution, a school or a correctional institution, there is an obligation on his part to provide a member of the Legislature with reasonable information. There ought to be a fairly hefty piece of protection in the act to protect their employees, because I see that as them simply doing their job and they should not be subject to harassment from a minister who might be unhappy with them releasing that information.

Mr. Scott: There is nothing in the act which sets down the terms of what is appropriate conduct for a minister, or what the minister can or cannot do. I think it is purely the choice of an individual minister in that situation. But you referred to the MacAlpine case, and that is quite a different matter. I do not want to say too much on that because that matter is still before the grievance board. It is not completed.

Generally speaking, what the government would say, in my view, is that if a public servant wants to complain about the procedures or the policies within his ministry, then he should do that within his ministry through the proper channels, at some point. If I disagree with the policy or something that is happening in the Civil Service Commission, I would think I would have the right and would go to the chairman of the commission and say, "I disagree." But at a certain point, he would make a decision and say, "That is going to be the policy." That is the policy; I have had my day in court and that is the end of the matter. I would not take upon myself to go out to the public and complain about a ruling of the Civil Service Commission any more than, say, an employee of General Motors should go out on the streets and say, "General Motors makes lousy cars."

Mr. Breaugh: You would soon be an ex-employee of General Motors.

Mr. Scott: I would soon be an ex-employee of General Motors; you are right. To a degree, the analogy is the same. There are so many different situations on that. I think the public servant is encouraged to disagree about procedures and say, "No, I do not think that is right." But I think there is a limit. You make your views known at a certain point. The ministry says, "Well, that is the way we want to do it and the way it is going to be done." I think that person then has the option; if he wants to go out and campaign against the procedures, I would suggest that perhaps he should--

Mr. Breaugh: I often think it is a very unhealthy situation when people working for the government feel that their jobs are in jeopardy if they simply state facts. I would make the distinction that I would not be encouraging civil servants to run out and mouth off about the evils of the Tories in Ontario, either--I think they should do that, but I will let that go--but I do think it is reasonable that when a member of the Legislature makes contact with a civil servant and asks for facts, he or she should be able to get those facts without having the cabinet office vet them, which is now the practice.

Perhaps we could recommend that some protection should be put in to the act itself that would do that, and could draw our lines fairly clearly. How does the civil service ever improve if no one is prepared publicly to release any information about what faults it might have?

Mr. Scott: My comment to that would be that I think a member asking a public servant for information is somewhat similar to some of the questions that have been put to me today, and I have had to dodge them and evade them and say I really cannot speak to those because they are political decisions.

I think in the Civil Service Commission we would be happier, and I think probably the public servant would be happier, if a member were to put his question to the minister and get the information that way rather than putting it to the employee and putting the employee in the position of giving out information that perhaps his ministry was not ready to release, or preferred that he did not release, or preferred that he release through the minister to the member.

Mr. Breaugh: Let me give you a couple of examples of what I think is wrong. And it would not do any great harm, in fact, it might be an improvement to the system if we put some changes in.

When we first provided for written questions here in the Legislature, I happened to be the Health critic and we put a whole lot of written questions on and it was really kind of nifty because people actually answered the questions and you had a basis of information upon which to conduct some political activity.

Of course, as soon as we began to make use of the information we got, things got changed and now all of our written questions are

vetted by the secretary to the cabinet. So the answer you get is that it will take six months to prepare this answer, and six months later they say the information is not available.

Another interesting example: This spring I thought it would be interesting to know how many assessors were dragooned from the remainder of the province to come in and prepare the working model for Metro. We spent a couple of hours on the phone and got some answers. Then, around noon, something magic happened, because about that time every office we called said they wanted us to go through the minister's office. We did and six months later we still do not have the final answer. We get a version of the answer.

My point is that the process has a flaw in it. I do not think it would kill anybody at a local assessment office to say, "Well, we have six people working in Toronto this week," or "We do not have anybody." What danger is there in putting that kind of limit on the civil service?

Mr. Scott: I would see one danger. That is, you would only be getting part of the answer and perhaps you could not get a total answer because the civil servant would not have all of the information. In other words, the civil servant may not know how many of those assessors, for example, were brought in for this purpose and how many were brought into Toronto for different reasons.

It would be the same about asking a question of a public servant such as MacAlpine. It could be just a personal opinion, that he thinks a certain procedure is wrong. The public servant is entitled to his opinion, but the opinion he gives may be a personal opinion and not one that jibes with the policy or the opinion of the deputy minister in the ministry.

I see that as one of the dangers, that the public servant has only part of the story and one would hope that the deputy minister or the minister has the full story.

Mr. Breaugh: I understand that there are probably some limits to it, and I always find that the brown envelope system, which is currently what we are stuck with, is probably useful to some degree, but why should it not be possible for anybody who works for the government to provide a member of the public or a member of the Legislature with information which he has? Why is it absolutely necessary that we set up some great vetting system? I think that is unhealthy.

Mr. Charlton: Inevitably, for example, in the specific case that Mike was referring to, if the information we get by calling 32 assessment offices across the province is not complete, when the question gets asked in the House the ministry certainly has the option of setting out the full story. I still do not see where the dangers are. Certainly there are things that a civil servant should not be expressing opinions about, but there should not be any problem.

4:40 p.m.

Mr. Scott: My personal view is that it is putting the

civil servant in a spot when he is approached by a member of the Legislature of whatever party and asked for information, which may be part of a larger question to which he has an answer to only one part. That would be my reaction.

Mr. Breaugh: That is the point; it is putting them on the spot now, and I think unfairly. But I do not see why it should not be just a matter of course that if a member of the public has the tenacity to ask a question, or if a member of the Legislature asks someone, you as a civil servant, or anybody else who works for the government, should be able to release that.

You can say, "We will take all the top-secret stuff out and classify that," but for normal day-to-day operational information I fail to comprehend why we need to threaten the individual civil servant. Why is he or she not quite free to release that information?

Mr. Scott: That would depend on the individual minister or ministry as to what extent they have made it clear they do not want employees to release that information.

Mr. Breaugh: There really is not a lot of protection for the civil servant in the act itself now. As you say, the protection is that if you are fired you have a grievance procedure but, unfortunately, that is not viewed by a lot of people as being a hell of a lot of protection. First, you have to get fired.

Mr. Scott: Again, if you are suggesting that direction should go out to each minister to the effect that they should allow their civil servants to release the information, I suggest that should not come from the Civil Service Commission but perhaps should emanate from the Legislature. In other words, the actions of the minister are not governed by the Public Service Act.

Mr. Breaugh: If they all had as much skill as you have, there would be no problem.

Mr. Charlton: Back to the question of political activity: There is one section--and we could talk forever about all of them and disagree forever--that has always particularly bothered me, and that is section 14, "A civil servant shall not at any time speak in public or express views in writing for distribution to the public on any matter that forms part of the platform of a provincial or federal political party."

First of all, that section seems to me to be completely ridiculous, totally unenforceable and a restriction that virtually says a civil servant cannot say anything publicly. I cannot think of anything that is not covered in some provincial or federal political party's program.

For example, I was just thinking about something while I was reading this again. There is a civil servant who is a parent. That parent happens to object to something that is going on in the public school system, a system which the province happens to govern and on which all three of the major political parties in Ontario, and all the minor parties for that matter, have policies and programs. That section virtually limits a civil servant from getting up at a

meeting at the local school and speaking out about something that is going on in that school that he does not like in relation to the way his child is being taught.

If we sat down and thought about it, we could probably think of a hundred thousand other examples of the same kind of things where civil servants should have the right to participate in their day-to-day lives, the raising of their families and so on. It seems to me to be a section that is beyond all belief. It does not seem to have any appropriate place in a free, democratic society.

Mr. Scott: I would agree to this extent: This section probably would require the greatest care in interpretation as to what it means, and probably the greatest leniency as well. But it was not intended, at least as far as I know--and this was enacted long before I arrived on the scene in the public service--to be as restrictive as you suggest.

The whole thrust of these sections is to suggest that the public servant should not be making speeches in public on a plank in the platform of a party, usually during an election campaign. I agree it is not meant to say that a person cannot stand up at a school board meeting and make some comment that just might refer to a part of a political platform.

Mr. Charlton: Who is it that is going to draw the line?

Mr. Scott: I think someone on the staff of the Civil Service Commission would be asked to make a ruling. But you would have to look at each particular case, and say, "Well, really, that was not intended." I do not know how you find the words. You are suggesting now that the wording just cannot live up to that or live within it. Perhaps some better wording could be found, but it was not intended to be so all-restrictive as you outline. I would agree with that.

Perhaps at the time it was written, if everyone knew what it meant--you had an election and the party platform was outlined and covered items 2 or 3 or 4, or whatever number they had--but now you are suggesting that any matter could be considered part of the platform. It was not intended that way.

Mr. Charlton: After being here for five years, I cannot think of anything that is not being covered by somebody.

Mr. Breaugh: How about something as blatant, for example, as when great Board of Industrial Leadership and Development program was announced? That was a full-tilt government scheme. When it was announced, throngs of civil servants were present, and even during the course of the election I seem to recall senior civil servants appearing in public speaking about the BILD program. It seems to me that is pretty carefully covered by that section of the act.

Was any action taken on the part of the commission to silence those civil servants from speaking in public about a political program?

Mr. Scott: As I said, you would have to look at each

particular situation. While that situation became part of the platform of the party, the BILD program was announced as the policy of the government, and the civil servant had his marching orders, "Okay, here's the program and let's get on with the job."

Subsequently it was referred to during the election campaign, but that civil servant had to get on with his job, whatever that required of him, and he is not in a position to say to his minister, "No, I am not going to do what you want me to do, because you are going to be talking about that during the election." It was actually a program of the government. They said: "Here it is. Go with it."

Mr. Breaugh: But in all of the ministries there are programs of that nature, where it is, first, the program of a political party and it is then promoted on a regular basis by civil servants. It seems to me that there is rarely--I cannot recall anyway--any action taken which says, "Now listen, you stepped across the boundary here from doing your job as a civil servant to promoting the best interests of one political party."

Mr. Scott: But the civil servant was not saying, "Here's a good program, and this great party introduced it and you should support it." The civil servant was just saying--I think it concerned energy; is that the one you are referring to?

Mr. Breaugh: Any part of it.

Mr. Charlton: I can think of another example. You are saying that in this case, because the government had adopted it, the government not being a political party but being the cabinet implementing a program as opposed to making a promise--I can think of a couple of examples where we had what were in effect political trial balloons, such as the Blair commission report, the municipal-provincial white paper on property tax reform, where civil servants were involved in the process of speaking about and trying to sell what in effect was part of the political process, not the government process.

What it comes down to is a very questionable line between which is which and how you apply these rules that exist.

Mr. Scott: Regardless of the words you change, there is always going to be that problem of a dividing line between what is appropriate and what is not.

4:50 p.m.

Mr. Charlton: As I say, in these cases they were definitely not government programs. They were never implemented and were never close to the stage of implementation, yet civil servants were involved in making public comment about those programs or proposals.

Mr. Scott: I am not familiar with the programs.

Mr. Charlton: The Blair commission report was done by the Blair commission, but it then became a political document which, in effect, civil servants were instructed to go out to public meetings

and try to sell. That was the way in which it was happening at that stage around the whole question of property tax reform. They had a document which the government wanted to implement but they wanted to be able to read public reaction first; so they had civil servants going out and trying to sell this package at public meetings all across the province.

Mr. Scott: Were they trying to sell a program or testing a program? Again, it is a question of whether they were trying to test a program or testing a reaction of the public for political purposes.

Mr. Charlton: Again, I do not know. I think the whole question of property tax reform has been a political question--

Mr. Treleaven: Government and political are not the same.

Mr. Charlton: Sure it has, and that is why it has never been implemented. It has never been implemented because the government sat down and decided what they wanted to do and then found out the public would not buy it. That is a political question, not a program question.

Mr. Chairman: There have been a lot of municipalities that have implemented the property tax reform.

Mr. Charlton: Section 86, right, but that is not what the Blair commission report was all about. The Blair commission report, as a result of the public response, is collecting dust somewhere. None of it has ever been implemented.

Mr. Treleaven: Mr. Chairman, is it in order to ask these gentlemen as to the rationale behind arbitration results of the past? Is that in order at this committee?

Mr. Chairman: I can't see why not.

Mr. Treleaven: It may be in Mr. Scott's purview or that of some other member. You will excuse my ignorance, my layman's language and my terms. I am referring to the maternity leave package that was recently granted in some arbitration decision of your commission.

First, was that a situation where you had to take either/or, you had two questions in front of you and you had to take one or the other, or was it the type of situation where you could come down with a compromise? Which was that?

Mr. Scott: Let me preface my response by pointing out that in considering the question of arbitration, again we are not discussing provisions of the Public Service Act or the Civil Service Commission as a commission, but rather the negotiations under the Crown Employees Collective Bargaining Act.

Under our act, the Management Board of Cabinet is the employer so that the staff of the commission are acting on behalf of the Management Board of Cabinet. In that situation, the union asked for maternity leave similar to that which had been negotiated or awarded by, I think, two groups in the federal public service, and I guess

there were two other cases in the country, provincial governments, where it was in effect.

Our position was that the board should not go so far so fast. We suggested some improvements in maternity leave provisions but argued that they should not go as far as the federal government had done, because a pattern had not yet been established for such generous provisions.

We tried to maintain the position that the provincial government should follow and not lead the private sector. There was no pattern in the private sector at all for this kind of provision. But the arbitration board has the power to rule on each of the issues, and its ruling was that we must adopt the maternity leave of protecting 93 per cent of salary for 17 weeks. So it was not an either/or; they just said, "Here is the provision."

Mr. Charlton: I think Mr. Treleaven's question implied that you somehow had control over the arbitration board, and I think you should make it clear to him that the arbitration board is independent of the commission.

Mr. Scott: Oh, yes.

Mr. Treleaven: You made representations to it on behalf of the employer, which is the Management Board of Cabinet, and the union made representation on behalf of the employees, and the arbitrator made a ruling.

Mr. Treleaven: So to get to the rationale behind that, I should have a different group of people in front of me and be asking them.

Mr. Scott: You have one of the people here, representing the employer's side before the board.

Mr. Treleaven: Yes. But to get the rationale of the decision, I would have to have a different person in front of me.

Mr. Scott: Of the decision; you would have to speak to members of the board of arbitration. There is a chairman appointed and there is a person representing the employees' point of view and a person representing the employer.

Mr. Charlton: Who appoints the chairman?

Mr. Scott: The parties appoint a nominee and the nominees attempt to agree on a chairman. If they fail to agree, the chairman is appointed by the chairman of the Ontario Public Service Labour Relations Tribunal.

Mr. Chairman: Any other questions from any member of the committee? Thank you very much, gentlemen. We appreciate your attendance and the information you have given us.

Members of the committee, if we could take another 15 minutes or so, John could give us a little background information on the Commission on Election Contributions and Expenses preparatory to our meeting with representatives of three political parties tomorrow.

Mr. Breaugh: Did you ever find out about that other political party? Have they gone out of business or what?

Mr. Chairman: The Unparty?

Mr. Breaugh: No.

Mr. Chairman: Oh, the other one.

Mr. Breaugh: I heard a rumour they had gone bankrupt, but I do not know.

Mr. Chairman: Tending as observers--

Mr. Breaugh: Afraid to come out of the closet.

Mr. Chairman: They are prepared to accept the status quo.

The committee continued in camera at 4:59 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

AGENCY REVIEW: COMMISSION ON ELECTION CONTRIBUTIONS AND EXPENCES

WEDNESDAY, SEPTEMBER 15, 1982

Morning sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
McLean, A. K. (Simcoe East PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher, Legislative Library

Witnesses:

From the Ontario Liberal Party:
Evans, J., President

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Wednesday, September 15, 1982

The committee met at 10:09 a.m. in room 151.

COMMISSION ON ELECTION CONTRIBUTIONS AND EXPENSES

The Acting Chairman (Mr. McLean): I call the meeting to order.

Mr. Evans: First of all, let me thank the members of the committee for the invitation to make this submission. I shall just wait a moment till those papers are distributed.

The view of the Ontario Liberal Party towards the Election Finances Reform Act is that this act and the accompanying commission which administers it have been a progressive experiment in democracy. Our view is that while the act has suffered somewhat from the usual problems of trial and error of any experiment, the act has served to make Ontario a more open political arena. We believe that the fundamentals of democracy are well served by such legislation.

Notwithstanding those comments, we believe there are a number of areas for considerable improvement. Before tackling those areas, I would like to highlight briefly the excellent work done by members of the commission and their staff.

First of all, I would like to congratulate the former chairman of the commission for the past few years, Mr. Arthur A. Wishart, for his even-handed and balanced approach to the administration of the commission.

In particular, I would like to cite the good work of two officials of the commission. Mr. Robert B. Dobson, registrar, has been helpful and thorough in all dealings that we in our party have had with him. Particularly, Mr. Donald A. Joynt, CA, executive director, is helpful and well informed in the administration of the act. In all cases these gentlemen have been exceedingly co-operative in our dealings with them and in the preparation of this submission.

The first area of concern of the Ontario Liberal Party relates to a number of amendments that have been proposed by the commission for amendment to the act. Many of these recommendations date back as far as 1976, and I believe in my submission we have circulated copies of the most recent consolidation of those recommendations. We believe that the government has been negligent in not tabling them in the House, as we believe in many cases these amendments could have found all-party consensus on their passage.

There are, of course, a few of these amendments which our party cannot support. However, it is clear that most of these amendments should have been passed well before this time. We do not understand the hesitation on the part of the government in bringing forward these amendments for consideration in the Legislature as soon as possible.

I will list below the amendments we support and, in the case of those to which the Ontario Liberal Party is opposed, I will give a brief explanation for our opposition. You can see the list, gentlemen. I will move down to amendment 5.

Amendments 5 and 9, which are listed in this attachment to the submission, deal with the amount of--

Mr. Eichmanis: Excuse me. I, as well, have the consolidation of the amendments. Members have those at the back of the section on the commission.

Mr. Evans: Thank you; that is correct. I provided additional copies because there were various editions and versions of that material, and I wanted to make sure that members had the one we were working from so that there was no confusion.

Mr. Eichmanis: To make sure we understand each other, what I presented to them is what the commission gave me after they had done all their checking and so on. This is the latest and most recent consolidation of the amendments.

Mr. Evans: Perhaps, then, I should cite for the record the section that each amendment deals with.

Amendment 5 deals with subsection 17(2) of the act and would strike out "\$10" in the third line and insert in lieu thereof "\$25". Amendment 9, which I will also deal with at this time, deals with section 31 of the act. It strikes out "\$10" in the sixth line, inserting in lieu thereof "\$25".

In our view, \$10 is a considerable sum of money in parts of this province. Increasing the limit to \$25 as the amount in excess of which contributions may be made by cheque does not seem to us to serve a useful purpose at this time and, frankly, may lead to problems which it is the intent of the act to avoid.

Amendment 13 deals with subsection 38(2) and is quite lengthy. We are opposed to this section only in the proposal for clause (b). Clause (b) would permit billboard advertising to remain on display on the day preceding polling day and on polling day itself.

This seems to us to be a contravention of the spirit and intent of the act, which seeks to eliminate all forms of advertising on election day. We can see that if this amendment were passed, abuses may well occur.

For the information of the members of the commission, it has recently become my understanding that this amendment has been proposed at the urging of members of the billboard advertising industry who argue that they do not have the ability to remove such advertising in the proper time called for by the act.

The position of our party, if that is the case, is that candidates should be aware of that when they enter into contracts to receive that advertising and should govern themselves accordingly, but the advertising should none the less be removed by the day before election.

Amendment 14 deals with clause 40(1)(c). While we are indicating support of the general intent of this amendment, we have some reservations.

When the act was passed in 1975, each party was guaranteed privacy in the affairs of its foundation with regard to public access to the financial data therein.

We would not be opposed to disclosing the affairs of our foundation to commission officials under firm rules of secrecy. However, we would not be prepared to make this data available to our political opponents.

We would be happy to discuss the matter further with members of the committee.

We are in support of the rest of the amendments. Again, let me emphasize that we would urge these amendments be brought forward to the Legislature for examination in the next session.

In general, it is our view that the Election Finances Reform Act has served to improve the democratic process in the province of Ontario. Where the act has fallen down, we believe, is generally in areas where it has not gone far enough.

Mr. Remo Mancini, MPP of our party, presented a private members' bill in the last session of the Legislature to amend the act to bring into force a number of significant amendments. In general, our recommendations will align themselves with that bill. In some instances, however, we are recommending some modifications to Mr. Mancini's proposals.

However, and I want to stress this most emphatically, we particularly endorse Mr. Mancini's proposals for controls on the spending of registered parties during campaign periods.

The first area of direct concern relates to spending by candidates during the campaign period. As you know, at present the act provides no limits on spending in campaign periods other than for advertising.

In general, most candidates of all parties have taken a responsible stand by not abusing the process by spending excessive amounts of money. There have been, however, some unfortunate exceptions. We view these exceptions as alarming in the extreme.

Frankly, if the views of many citizens today are negative about the political process and the participants in it, at least one cause seems to us to be the excesses of spending of some candidates that has been one of the major factors in contributing, over the past few years, to the poor perception on the part of some members of the public of the political process.

Gentlemen, we all suffer, all politicians suffer for the sins of a few in this case, we believe.

As you may know, in the last campaign, a candidate for one party in the riding of St. Andrew-St. Patrick spent, with transfers,

\$132,552.95, according to his filing with the commission. It is our belief that figure is an insult to the voters of Ontario. First of all, it should be pointed out that St. Andrew-St. Patrick is one of the smaller ridings in the province. It is politically compact and, because it is an urban riding, relatively easy to canvas. The figure I have just quoted represents, in our view, irresponsible opportunism.

It is with these excesses in mind that we make the following recommendation: that the act be amended to include limits on campaign spending by each candidate of every registered party during the period of the campaign. This period would take effect at the moment of the declaration of the writ of election and terminate with the closing of the polls.

During that time, we believe each candidate should be limited along the lines of approximately the following formula: 90 cents per elector for the first 25,000 electors and for each additional elector in a constituency, 50 cents per elector. We would recommend excepting intraparty transfers from these limits.

Using this formula, it is easy to see what the effect would be. In a small riding having only 30,000 electors, let us say, the campaign period limit would amount to \$25,000. In a large riding such as the one I live in, which is Scarborough North, having approximately 90,000 electors, the campaign limit would be approximately \$55,000.

These, we believe, are realistic limits that should be adjusted from time to time to account for inflation. To allow for that adjustment, the commission should be allowed some discretionary authority for periodic increases of the allowance.

One further point needs to be made about spending limits in campaign periods. It must be pointed out that candidates spending excessively are also being subsidized by the taxpayers of Ontario through the rebate scheme provided for in the act. We believe that if this is permitted to continue, only more and more cynicism about the political process will develop. We believe prompt action is necessary.

In the second area we would like to address, we would like to urge the committee to examine the Election Act and the Election Finances Reform Act with a view to providing greater clarification as to the definition of what constitutes advertising.

We can see areas of great confusion and even some possible abuse as new technologies become available. For example, does the new Telidon technology represent a form of advertising? If so, it should be controlled in some manner in the framework of the act.

Another type of advertising that must be clarified is the question of government advertising itself. If, as the government claims, the massive advertising campaign instituted by a number of government departments prior to the last election campaign was not part of the Progressive Conservative Party's overall campaign strategy, then we ask why was it done. We are unable to find a satisfactory answer.

This clear abuse in the last campaign must be stopped. Therefore, we would urge members of the committee to consider, within the framework of the act, the cessation of all government advertising during the campaign period other than that which is absolutely essential, urgent or of an emergency nature. Discretion could lie with the commission.

If members of the government party wish to argue that the government advertising should be maintained through the 37-day election campaign period, they are really arguing in favour of an unfair monopoly on the part of one political party.

In 1980-1981, the advertising budget of the government doubled from the previous year to nearly \$24 million. This must be prevented in the future.

10:20 a.m.

Another area of concern is the area of municipal elections. Because of the lack of control over constituency association spending, some constituency associations have chosen in the past to make contributions to the campaigns of municipal candidates. In fact, what has been happening is that the tax credit provisions of the act have been used to raise funds for municipal campaigns. Clearly, this is an illegitimate use of the act, at least in spirit.

We would urge that the act be reviewed to provide greater clarity in this area. Our party can accept the use of the tax credit system in municipal politics. However, let us have an amendment to the act to make this clear.

Furthermore, we believe that disclosure of municipal candidates' spending in municipal campaigns is essential. While we do not believe this disclosure is necessary in small communities in most of the rural parts of the province, clearly there are areas of possible grave electoral abuse in rapidly growing urban and suburban sections of the province.

Politicians whose everyday concerns revolve around issues such as zoning, land development and capital contracts are clearly open to influences which the Election Finances Reform Act sought to eliminate at the provincial level. Municipalities, being corporate creations of their provincial government master, should be covered under similar provisions.

It may not be appropriate to include municipalities under the terms of the Election Finances Reform Act; however, we believe this committee ought to seek the most expeditious means of dealing with this problem.

Let me emphasize again that we are not recommending the use of the chief financial officer system at the municipal level. However, perhaps disclosure of all donations of more than \$100 and an audited statement that must be submitted to the municipal clerk within a fixed time after the completion of each municipal election campaign would serve to eliminate many of these abuses.

Also, the use of the tax credit principles at the municipal

level seems appropriate. Some have objected to this, claiming that it would be unmanageable. However, we believe tax credits could be issued against the Ministry of Revenue which would not be overly cumbersome and which would provide for equity at the municipal level.

On another point, inflation is attacking the value of the tax credit system provided within the act to individual contributors. We think the value of tax credits should be increased. Perhaps 75 per cent of the first \$200 contributed would be realistic, along with corresponding increases of 50 per cent of the next \$500 and 25 per cent of the remaining \$400 to the first \$1,100 total.

We believe this would provide a real incentive for people to contribute to the political process in this time of some economic difficulty. If I could digress for a moment, it would also provide the incentive to the small contributor, the individual in society.

One area of very grave concern to the Ontario Liberal Party results from our experience in the riding of Dovercourt in the last election. The problem of a bogus candidate improperly using a party's name and logo is a serious concern to us.

The Ontario Liberal Party believes that under the act each candidate for each registered party should be registered with the commission when he is nominated by his party. As proposed in the amendments to the act from the commission, the name of each party would become a registered entity under the act.

We believe that each party should be given the ability to seek in the Ontario Supreme Court an injunction against any person who improperly uses the party's name or logo.

The problem in the Dovercourt situation resulted from the lack of ability of any authorities to enforce the injunction that we did obtain. I would point out, gentlemen, that we did obtain an injunction in the Ontario Supreme Court.

Our party believes that the chairman of the commission and his officials or the chief electoral officer of Ontario should be given the responsibility and the obligation to enforce the provisions of the act as directed by the courts against any bogus candidate.

This enforcement of the provisions of the act should include the right to seize literature and remove advertising which falsely claims a party logo or name.

This, we believe, is essential to protect the process as it is now provided for in the Election Act and the Election Finances Reform Act.

In a further area, the Ontario Liberal Party would like to seek clarification by amendment of the act of exactly who is entitled to make a contribution to a party.

The act specifies that Ontario residents may make contributions to a registered party. On a number of occasions, however, disputes have arisen over what constitutes residency. In specific cases the commission ruled both for and against accepting

contributions in various situations. This is an area we believe needs thorough clarification.

Also, we are concerned about the ability of certain corporations doing business in Ontario to make contributions to parties which they support.

As you know, certain United States legislation has been used as an excuse by many companies not to participate in the political processes provided for under the Election Finances Reform Act. This, we believe, is an illegitimate application of the United States extraterritorial jurisdiction. As such, we believe it is unacceptable.

The Ontario Liberal Party urges members of the committee to search the ways to encourage Canadian subsidiaries of foreign companies to participate in appropriate ways provided for under the acts.

Furthermore, we suggest that the government of Ontario seek discussions with the Department of External Affairs and other relevant federal agencies to seek ways to rectify this situation.

In another area of some concern, we suggest to this committee that ways should be sought to clarify the part that a leadership convention plays in the political process of this province.

The recommendation of the Camp commission was to specifically prohibit using the tax credit process for fund-raising in leadership contests. We believe this is wrong and should be changed. Clearly, in the view of the Ontario Liberal Party, a leadership convention is an essential part of the political process.

It has come to our attention, through examination of constituency association filings of all parties, that a number of constituency associations currently are carrying major cash surpluses amounting to tens of thousands of dollars on their books.

It so happens that these associations are represented in the Legislature by Progressive Conservative members who are rumoured to be candidates for leadership of that party when the Premier decides to retire.

Since there is no prohibition in the Election Finances Reform Act as to how these constituency associations choose to spend that money, the possibilities for avoidance of the intention of the act are obvious. We are not necessarily opposed in this situation, but we do believe that immediate clarification is necessary.

A further area of concern relates to the securing of loans and indebtedness as provided for under the Election Finances Reform Act.

As the members of the committee will know, it is permitted under the act for a candidate or constituency association to borrow funds from any chartered bank or trust company. In conversation with officials and candidates of other parties, I have come to know of similar concerns among them. As an example, take the case of a candidate who has incurred a sizeable debt during a campaign which

is then secured by a bank loan. The note for this loan may be signed by a number of individuals, including such people as the candidate's campaign manager or the constituency association president.

Should a candidate default on such a note, does that financial burden become the responsibility of these other individuals? Clearly, under normal circumstances the answer is yes. However, the Election Finances Reform Act specifically prohibits this as an illegal contribution over the limits of the act.

This badly needs clarification. We call it to the attention of the members of the committee for their consideration. We know it to be an area of considerable concern to a number of members of the commission and, I would point out, of considerable concern to many Ontario bankers.

Also, we would like to recommend a change in the tax receipting process under the act.

We believe that effective fund-raising by the political parties can be improved if tax credits issued in the months of January and February of each year were allowed to be used on the previous year's income tax return. In effect, this would be similar to the registered retirement savings plan tax receipts currently taken advantage of by many Canadians.

Frankly, a tax credit given to an individual who has made a contribution to a party seems considerably less valuable when that individual must wait eight months to one year in some cases to receive the tax advantage.

In general, let me emphasize strongly that the Ontario Liberal Party believes the Election Finances Reform Act to have been a progressive piece of legislation that has enhanced the quality of political life in this province. We continue to support its general aims and its administration by the type and style of commission that we have become familiar with over the past few years.

We would strongly urge members of the committee to consider areas of essential unfairness or abuse that still lie within the framework of what we believe in general to be a good piece of legislation.

Thank you for this opportunity. I would be pleased to respond to questions.

The Acting Chairman: Thank you, Mr. Evans. Do you have anything further to add to that brief at present?

Mr. Evans: With the submission and the attachments, no sir.

Mr. Treleaven: Mr. Evans, on the billboard matter, you pointed out the problem and the concern but you did not come up with a solution. All you suggested was that when candidates are entering into a contract with the billboard company, it should be drawn to their attention.

Let us take western Ontario as an example. If there is a

billboard company in London, it probably sells billboards from near Brantford right down to possibly near Windsor. It is just physically impossible for them to get all the billboards down within the specified time unless they start back 30 days before election day, which would negate most of the reason for having the billboard in the first place.

What is your practical answer for this? We ran into this last time in my riding and the answer was that they physically could not get them down.

10:30 a.m.

Mr. Evans: Yes, I understand that there is a practical problem. First of all, I would like to highlight another problem. That is, in a situation where one candidate does take billboards, he may locate them very close to polling places. This is where the problem has arisen in areas of conflict between two parties.

My response to your question is essentially that, as with any contract, the parties entering into a contract have to know the terms of the agreement going in. I would suggest that candidates entering into such a contract could simply avoid the problem for themselves by including within the terms of that contract a specified time by which the signs must be removed and a specified time before which they cannot be removed.

Mr. Treleaven: Right.

Mr. Evans: Once you have locked in the supplier, he is then compelled to meet the problem.

Mr. Treleaven: In the same way, I say facetiously, as when anyone signs a promissory note at the bank that he will pay on a certain date, sometimes he does not pay. It is fine to say you are under legal obligation to do something, but what happens if the person does not do something? Again, I ask for your solution to the problem.

Mr. Evans: First of all, I think the obligation of the candidate is satisfied by the signing of the contract. The obligation of the company to ensure that in fact it can remove those signs as required could be accounted for, for instance, simply by hiring additional staff for the period of time the signs need to be removed. We cannot offer an explicit solution to this problem.

In this city, for example, we have the signs on the bus stop booths or kiosks. The company operating that system is one of the companies that have made submissions on this matter. They are very concerned about this. It would represent a substantial loss of revenue to them if they did not have political campaigns from time to time.

On the other hand, our view is that the act is there for a very good reason, which is to control advertising. We believe the principle of not permitting massive advertising on the day before polling day and on polling day is a good one. In fact, in the part of the city I live in, it would probably be desirable if we could do

something--although I am saying this somewhat facetiously--about stopping some of the excesses that go on in sign campaigns in those last few days and end up leaving the streets in my part of the city littered with all kinds of rubbish for days afterwards.

We believe the principle is sound, and perhaps further discussions are needed with members of the industry, but it seems to us that temporary help could be acquired to meet the obligations of those kinds of contracts.

Mr. Treleaven: On the second topic, you were talking about spending limits or allowances such as the federal candidates have, so many cents per voter etc.

Mr. Evans: That is right. Yes.

Mr. Treleaven: You are saying that in a large urban riding with, as you mentioned, 90,000 voters--I can think of one very rural one with 26,000 voters--on the basis of a per-head allowance, that would be equitable.

How would you respond to the suggestion by me that if you took Brampton, or Tom Wells's riding, Scarborough whatever it is, as compared with Cochrane North, it would cost the present member for Cochrane North as least as much to wage a campaign and to get around to his 26,000 voters as it would one of those other ridings that have 100,000 voters? Therefore, would it not work out to be inequitable to tie the candidates for Cochrane North to one quarter or one sixth of the large urban riding candidates?

Mr. Evans: First of all, let me point out that the act already contains special allowances for northern constituencies, special limits and permissions. Those may have to be expanded and adjusted to deal with the geography of the situation.

The reason we are taking Mr. Mancini's suggestion of 90 cents a voter and amending it in the direction of a sliding scale is that when we took a look at the 90 cents per voter and did some quick math, we found that in Mr. Wells's riding of Scarborough North, where I live, we ended up with a limit of about \$81,000. We think that is excessive. So we looked for a mechanism that would allow some paring back of that in the larger ridings.

The intent was not to have excessive limits in big urban ridings. If there are problems of transportation and communication in the larger ridings, I am quite sure that on examination the mechanisms can be found that would deal with those. I think the basic principles are there in the act already in so far as the northern allowances are concerned.

Mr. Treleaven: Leaving aside the uniqueness of the huge northern ridings, let us take some of the ridings of southern Ontario that go from perhaps 75 miles from corner to corner but still have quite large distances and hundreds and thousands of miles of roads in them. I perhaps took one extreme example and you mentioned the north, so let us keep it to the south.

I still state that it may well be more expensive to wage a

campaign in a normal-sized riding like my own, Oxford, or perhaps Mr. Johnson's, Wellington-Dufferin-Peel. We may have more expenses in trying to reach the voters when you may have one voter per square mile or per quarter square mile than when you have a trillion people in one apartment building, piled one on top of the other. One sign hits them all on the front walk.

Mr. Evans: Sure. The real cost of a constituency campaign is usually made up of two major factors that are the variables, the first being the cost of printing and publishing of literature, the second being the cost of printing and publishing signs. Most of the other costs are relatively fixed. We believe that this formula addresses those two costs fairly directly.

Not having limits in the act creates a situation in which, for whatever short-term advantage some candidate may see, spending \$132,000 can seem like an attractive thing to do but ends up being offensive to many nonpartisan voters.

We receive in every campaign, as I am sure members of the other parties do as well, literally hundreds of phone calls from people who are offended by the overkill of excessive campaigning by all parties. What we are looking for is some way to provide for reasonable controls that work.

You mentioned the federal act. I have yet to hear a federal candidate say that the limits in the federal act were a bad thing. In fact, what ends up happening in the federal act is that those controls allow for better financial management and make life a little more secure for all candidates.

Mr. Treleaven: May I point out one thing here? You mentioned the two heavy expenses in a campaign. I think you are thinking in terms of urban ridings now. I would suggest that in the riding where you live, Scarborough North, there would be one campaign office, presumably, for each of the candidates.

Mr. Evans: Not necessarily.

Mr. Treleaven: In some of the other ridings there are numerous riding offices and campaign offices with staffs. I would suspect that perhaps Mr. Mancini is more likely to have one office in a campaign in Windsor.

Mr. Mancini: I had four offices in the last campaign.

Mr. Treleaven: Perhaps that is not valid then. Perhaps the urban candidates will have as many as the rural, although I still doubt that.

Mr. Evans: With respect, I simply have to disagree. Many urban ridings have more than one office. Scarborough North is approximately 14 miles end to end; that is the most densely populated 14 miles in Ontario and you cannot campaign, necessarily, out of one office. Many urban ridings have more than one office.

Transportation and communication in a large rural riding may well be a consideration. If they are, I suggest to the members of

the committee that they find an effective way to add to the formula something that would compensate for that.

The problem of this kind of gross overspending by some candidates is really tainting us all. I submit that once reasonable limits are established, what you end up with is a situation that makes everybody a little happier, because we all know under what rules we are going to play the game and we play it by those rules.

Limits make sense. We can find formulas we are prepared to discuss, other kinds of formulas, but we believe something has to be done before the next election.

10:40 a.m.

I do not accept the argument that these transportation costs are so excessive they cannot be accounted for in some kind of formula. In an urban riding, I would point out, you have other additional costs if you are campaigning in the 1980s, such as phone banking--very heavy telephone costs--which may not be the case in a rural riding.

Campaign style varies from one part of the province to another but you can win a campaign spending reasonable amounts of money. The voters are getting fed up with some of this excessive spending.

Mr. Mancini: Mr. Chairman, I just want to ask Mr. Treleavan if he agrees with any type of limits at all.

Mr. Treleavan: At this point, I personally have not run into any problems with limits. Having been intricately involved in several federal campaigns, I do know that in waging a campaign it is difficult to fit it into limits. It is very difficult to wage a campaign with those limits--

Mr. Mancini: Reasonable limits, we are talking about.

Mr. Treleavan: --in the riding of Oxford. Certainly I think the federal limits are very difficult for everyone. They work out to be rather unfair.

The Acting Chairman: Mr. Johnson, do you have a supplementary?

Mr. J. M. Johnson: Mr. Evans, you have dealt with a concern you have with the Liberal Party pertaining to the excessive dollars spent in some of the ridings. I submit that while you may be trying to achieve an element of fairness, you are only looking at one side of the equation.

In any campaign there are two things involved; one is the dollars spent and the other is the campaign workers and the time they contribute to the election. If you have a worker who knocks off his job and he is earning \$1,000 a week, he contributes, in essence, a month's salary of \$4,000. You have not addressed that.

Mr. Evans: We do not believe goods and services rendered by an individual for which he is not normally compensated, which is

the wording of the act, would be counted as part of expenses. It is a very simple answer, but that is the case.

If somebody renders goods or services to a candidate for which he is normally compensated in some way, either by his employer or as part of a billing and invoicing arrangement, then those are goods or services that have to be accounted for in the expenses already under the act. You have to report that, tax receipt it and so on.

But work such as canvassing, telephoning and all the kinds of things campaign workers normally do is not now part of the taxable provisions of the act, and we would not see putting them under the expense limits either.

Mr. J. M. Johnson: Mr. Evans, I think you know that the point I am trying to arrive at is simply that one candidate happens to have many people who cannot take time off from work but who are willing to donate a few dollars towards his campaign; so he has a few extra dollars to spend in that campaign.

What advantage does he have compared to the candidate who perhaps cannot come up with a lot of money but can come up with hundreds of people who will contribute time to the campaign? One candidate has to hire people to put up signs, another has dozens of people willing to do it. What's the difference?

Mr. Evans: The difference is that one has support from the public and one does not.

Mr. J. M. Johnson: Not necessarily so. Let me just explain that. In my riding, I can go to a farmer who is not going to take time off from his harvest but who may be willing to give me \$10. I can take the \$10 and hire a young man to spend two or three hours putting up signs. What is the difference? Is it public support?

Mr. Evans: The difference, sir, is that unless we find some sort of formula that is workable, we are going to continue to have this problem of deteriorating attitudes among the public towards the process as we participate in it. It is a serious concern of ours that people are becoming much more cynical about the process.

I can well see how there would be a number of ways we could include in some formula, some mechanism to compensate for that style of campaign. I do not know that many people actually hire people to put up signs--no, I take that back, pardon me. Mr. Wells certainly does; but whether he does--

Mr. Mancini: In fact, I am sure he has volunteers to put up his signs--many volunteers.

Mr. Evans: Yes, I am sure he has many.

Mr. J. M. Johnson: I just feel that if you want to be fair, and that is what you are suggesting, you should take a look at all aspects of it, not just the one side. I am concerned that you cannot have all kinds of free help and have an upper cap of \$25,000

on three candidates, one with 100 supporters out working, another with 1,000, and call it a fair deal.

Mr. Evans: I do not see the unfairness as long as the limits are applied across all candidates in the same constituency and as long as the formula has some way to adjust for the size and nature of the campaigning in that riding. I do not see any unfairness at all. In fact, with respect, I think the issue you have raised is a red herring.

Mr. J. M. Johnson: Naturally, I have to disagree with you.

Mr. Lane: Mr. Evans, I did not get a chance for a supplementary when Mr. Treleaven was talking about various comparisons between the north and the south. I think there are only four ridings in the north that have any special benefits at the moment. That certainly can be changed, there is no question about that. But Algoma, which is Mr. Wildman's riding; Parry Sound, which is Mr. Eves' riding, and Algoma-Manitoulin, which is my riding, are very large ridings, and we are not included in that subsidy at this time. My riding is so large I have to go through two other ridings to get to Killarney, which is part of my riding, if I am going by road.

Mr. Evans: If you have that problem and you know that constituency, I think we would be supportive of making some amendment to the act that would recognize that.

Mr. Lane: There is not only myself, but Mr. Wildman and Mr. Eves should have the same consideration because they are very, very large ridings for not too high a population.

Mr. Mancini: John, what were your total expenditures for the last election?

Mr. Lane: About \$27,000 or something like that. I do not know. I am not a big spender.

Mr. Mancini: And that is one of the largest ridings in Ontario.

Mr. Lane: We are one of the largest in square miles, yes. I just wanted to make the point that I am sure it could be corrected but at the moment it has not been.

I would like to commend you on bringing forth a very concise brief to this committee. I noticed on page 2, when you are talking about amendment 14, you indicated you would not be prepared to make this data available to your political opponents but you would be happy to discuss the matter further, I assume, with us?

Mr. Evans: Yes.

Mr. Lane: I thought you were asking for an opportunity to go a little further on that, were you?

Mr. Evans: I would like to see the matter gone into further. I and my staff have discussed the matter with people at the

commission. Unfortunately, the people who served on the committee at the time the act was drafted are generally not available to me at this time--they are out of the country or what have you--with the exception of one individual.

He informs me that at the time the essential bargain that was struck was that the foundation was created with the assets each party had at that time. You were allowed to put those assets into the foundation, secure them and set them away in privacy. We heard rumours about the size of at least one other party's foundation. Frankly, we are not terribly concerned about the size of the foundation. What is of concern to the commission is the management of those assets in a proper way.

So what we would be happy to discuss is some mechanism that would permit officials to ensure that a periodic audit of these assets is undertaken, that they are not being manipulated in some improper way. We are not making any allegations. It is simply a concern that has been voiced by the commission.

The intent of 14 is to open up those assets to scrutiny. Our only reservation is that we think the essential bargain should be honoured, that the nature of those assets, their size and so on, be held in secret. If the decision of this committee and the recommendation to the Legislature passes that such amendment be carried forward to the act, then we will disclose. There is no problem, we have nothing to hide, but we think a bargain of that nature that underlies the nature of the act should probably be preserved.

Mr. Lane: You think, in other words, there is a better way to do it?

Mr. Evans: Yes. I do not want to put words into their mouths, but I think the feeling of some of the members of the commission is that we can probably find something that is workable.

10:50 a.m.

Mr. Lane: On page 3, about the fifth paragraph down, you are talking about using this formula, you see the effect it would have in talking about the ridings and \$30,000 as opposed to \$90,000--I think Mr. Treleaven brought that up. Even though I personally see no reason to spend a lot of money on a campaign and have always got by with a few dollars, I think there is quite a difference in ridings and the requirement to spend dollars.

Mr. Johnson posed a good situation a few moments ago. For reasons best known to themselves, people would sooner give dollars than their help in some ridings and in others they would sooner give help than dollars. Maybe they should be related in some way. Personally it would not bother me, but I am just wondering if that is the proper procedure to correct the situation. To suggest the procedure you have suggested, I do not think is the proper one. Maybe there is a better one.

Mr. Evans: We indicate we would be more than happy to discuss amendments to this kind of formula. This is simply a

suggestion. As some of you may know, Mr. Mancini has unfortunately been ill this summer. We have not had a chance to discuss at length the suggestions that appear in his private member's bill. What we are committed to are reasonable limits that are not offensive to the general spirit of good campaigning and will deal with the rising tide of, frankly, public disgust at what goes on in some campaigns.

You gentlemen were obviously not in this city very much during the last election campaign. This city was a mess, with the junk and the garbage that littered the streets of downtown Toronto for weeks. People were fed up with it. Every candidate took flak for that, whether he was responsible or not.

Mr. Chairman: You are not complaining about the results, I hope.

Mr. Evans: We will take our chances at the polls any time, Mr. Chairman.

Mr. Breaugh: Let us have a federal election.

Mr. Epp: You need 54 days' notice. I sense he is unhappy, he is trying to violate the act already. There you go again.

Mr. Evans: Mr. Epp speaks well for our party. The point is that these campaigns have, in many ways, become a gross kind of abstraction of what is intended in any reasonable person's mind. We agree with you; by taking away this kind of nonsensical incentive just to spend more and more money, by providing reasonable limits, once everybody knows what the rules are, we are all set.

Mr. Lane: I guess that comes back to the fact there is a large difference in one kind of riding as opposed to another. Up north you would wonder if there was an election on or not, because the area is so great we do not even try to cover the area with signs. Maybe we have a sign at the entrance of every town and village saying "I am the guy," but along Highway 17 from Espanola to Elliot Lake I would probably never have a sign at all. We do not have any pollution of signs, as a matter of fact. It is a very easy job to take them down if not too many are put up.

However, I can understand your problem and I think you are right in that there is a point of overkill and people get fed up with it. In populated areas, I would think you are right; in my area, it would not apply.

In the next paragraph, I thought you were indicating you were not in favour of tax benefits, but later in the brief I find that you are. So what are you really saying there?

Mr. Evans: What we are saying is it seems to us to be just a further diminution of the system. It is a very negative factor to have, on the one hand, the individual I was speaking of, raising something in excess of \$100,000 and spending \$132,000 and receiving a subsidy of more than \$5,000 from the public purse.

If we are going to provide these subsidies from the public purse, and we believe they are appropriate, it seems absolutely

irresponsible to be providing that kind of money to somebody who has already dropped \$132,000 and is putting \$15,000 more into the bank. He is building a war chest, that is all that is happening. Frankly, the people have caught on to it. I received about eight comments at the door in the last provincial election campaign about the subsidies: Why were we subsidizing candidates who were obviously flush?

That is a real problem as it becomes more and more widely known in the public perception that these subsidies are provided. I point out to you, sir, that most people do not know about those subsidies. Maybe it would serve our--I will not say that, but it really is offensive to people to find out that the public purse is going to subsidize candidates after they have gone through that kind of exercise.

Mr. J. M. Johnson: Would you subsidize some and not others?

Mr. Evans: No. I would provide reasonable limits within which people could spend and then provide subsidies.

Mr. Chairman: You are penalizing success.

Mr. Evans: I think not, Mr. Chairman. I think we are quite committed to the notion of an open system.

Mr. Lane: I have a little difficulty with that. It is something like the old age security when they used to have to take the means test. We did not like that so now we give it to everybody. I have a little trouble--

Mr. Mancini: I am sure you are in favour of giving old age security, John.

Mr. Lane: Don't tell anybody. In any case, I have a little trouble with that one. I think if I have the ability to go out and raise the money, I should not be penalized because I have that ability, not that I necessarily would.

There was one other thing you indicated at the top of page 6. You talk about the tens of thousands of dollars that some members are carrying on their books for hopeful leadership contenders. How did you come to this conclusion?

Mr. Evans: By reading the Toronto Globe and Mail, for one thing.

Mr. Lane: You cannot believe the Globe and Mail. You must have some real facts some place.

Mr. Evans: I understood it endorsed the Tory Party in the last election, and you say I should not believe it. In the case of the candidate I have already mentioned, he carries forward to his bank account a statement of disposition of surplus of \$15,935.90 out of the 37-day campaign period. It is wrong to use public money to subsidize a man who simply deposits it to a bank account.

Mr. Chairman: That goes to the party, I understand. He cannot use that personally after the election.

Mr. Evans: No, it's held by his constituency association.

Mr. Chairman: Yes, any surplus.

Mr. Evans: Which has no controls as to how they spend that money. They can turn around and spend it on his leadership campaign.

Mr. Epp: Or send him to Britain to investigate whether they have any particular problems there.

Mr. Chairman: I thought those funds had to be audited on an annual basis.

Mr. Evans: Yes, they are, and we can tell you, on the basis of the most recent filing, that figure has increased substantially due to the interest it is earning and more money being deposited.

Mr. Chairman: All right. Are you through, John?

Mr. Lane: I guess I just have a little difficulty with it. I think that is more hearsay than fact. I personally would not know that myself and I would be as close to these gentlemen as you would be, probably a little closer. I think that has to be hearsay.

Mr. Evans: Let me say that for whatever purpose these surpluses are being gathered, it is an illegitimate operation to be using the taxpayers' money to flush out a fund of that kind, and that is what is happening. In this particular case, that candidate received a subsidy from the government of Ontario of \$5,902.46, or approximately one third of the amount he put into his surplus deposit. We think that is just offensive to the spirit of the act and to responsible government.

Mr. Lane: I personally would sooner have people donating \$2 than I would have them donating \$200, but I would want a few more thousand people involved, that's all. I think that is the secret of the contest, really, to get a lot of people putting in a little bit of money so they have a stake in there.

Mr. Chairman: It saves a lot of fund-raising dinners, John.

Mr. Lane: I never have those. Anyway, how we do things in the north is different from how we do things in the south. Again, I congratulate you on a very good brief.

11 a.m.

Mr. Watson: I have a particular point as a supplementary to John's. What is the difference, in your estimation, between putting that money into an account and having it turned around and used for municipal people being elected?

Mr. Evans: The act attempts to make it clear that should not happen. In fact, because of the loophole in the act, which you

could drive a truck through, the associations are not in control of how they spend their money, and they can use it in municipal campaigns. As I think we have pointed out, we have no fundamental problem with providing something similar to the Election Finances Reform Act at the municipal level. We are urging the committee to have a good, long, hard look at this situation and to provide some clarification.

Mr. Watson: Let me put it this way: Is the same principle involved here, though? Is the principle of using the excess funds to make whatever accusations you want to make, the same as using the excess funds to elect somebody to a municipal office some place? Is it not the same principle?

Mr. Evans: Yes, I would say the principle is similar. All I am saying is, let us clean the act up, so we all know what the rules are.

Let me make it very clear: We are not opposed to the use of the election tax credit system to raise money in leadership conventions. As I think I have pointed out, we believe the leadership process, as a part of the democratic process, is in every sense as important as the election itself in many cases. If that, in fact, is the case, in our view it is quite appropriate for the act to be applied in that way, as it may be very well appropriate in a political sense for the act to be applied at the municipal level.

We see no problem with that, but we urge the committee to have a serious look at it, because the hole is wide enough to drive a truck through, and it is becoming an increasing problem of confusion--distortion, if I can say the word; I think that's fair--that needs to be dealt with, and soon.

Mr. Watson: I guess my point is, do you see it as the same hole?

Mr. Evans: Yes, it is fundamentally the same hole, because it is the lack of control on how constituency associations spend their money. It permits the situation to exist.

Mr. Watson: I wanted to discuss your suggestion and maybe flesh it out a little bit. In terms of the tax credit system being extended for two months, I understand what you are saying and why you have said it. I just find some personal problems as to how I would justify that to my constituents. I think with the registered retirement savings plans, we are dealing with a benefit to the individual versus the government, really, but we are dealing with only the individual.

Mr. Evans: Yes.

Mr. Watson: If you extend this to a political party, you are dealing with the individual--the government is giving up--but there is a third party benefiting. I would have some difficulty in justifying that exemption for a political party, versus the United Way, versus a church, versus anything, because it seems to me we have a different factor in there. If we start doing it for political parties, we will have a hard time answering: "Why can't you do it

for the United Way? Why can't you do it for other charitable organizations as well as political ones?"

I guess my point is--and I am not trying to sell it, all I am trying to do is to get your discussion on it--I see the RRSP thing as a deal between the individual and the government, nobody else. You might say the trust company you are buying from might be involved, but it is just the vehicle. There are just the two. There is no benefiting third party. But once we get into this, we have a benefiting third party.

You and I might like it because we are the benefiting third party, or our organizations are. But on a matter of principle, there would be a benefiting third party, which I would be reluctant to recommend without a lot of thought. I think we would get ourselves into some criticism, and it would be of a nonpartisan type. I just think we would have a hard job justifying it to our charitable groups.

Mr. Evans: I can see your concern. I think, in fact, there is a third party in what you have described as the two-party arrangement. We are not just dealing with government and the individual. I think the trust company is the beneficiary in a very real sense.

In talking to a couple of trust company officials, they saw no problem with their system of back-dating receipts they currently work under in the RRSP system. We asked them how it works and we could not believe how simple it is. They just date the receipts December 31. That is how they do it. The tax department accepts it. It is by regulation. It does not even appear in the tax act, as I understand it.

I guess my response to you is if it is appropriate in this situation, then we ought to do it, and if it is appropriate in the situation of the United Way or the cancer fund or whatever, we ought to do it there too. If it is of positive benefit, if it makes it easier for these worthwhile organizations to raise money--and I think political parties are worthwhile organizations, just as charities are--then if this is a simple and uncomplicated mechanism that will allow them to expand their operations and do their job better, I have no problem with it.

Mr. Watson: I guess I would not have any problem if you could take all charitable donations and move them up two months, so that they all had the same thing--

Mr. Mancini: Do you not think we already have the same status because our tax credits are much better than the other worthwhile organizations that you are talking about?

Mr. Evans: Yes, that is a valid point. We are talking here about a tax credit, which is very different than a tax deduction or an expense deduction.

Mr. Watson: Yes, I realize that; but again it is how it is perceived. With the RRSPs, as you say, are the trust companies the beneficiaries? They are the vehicles. It is not done for the trust

companies' benefit, it is done for the individual's benefit, and they just happen to be the vehicles.

Mr. Evans: Perhaps I would suggest to the committee that it might be appropriate for you to talk to people at the Ministry of Revenue and the federal income tax department. They may be able to advise on the technicalities here, as to what problems they see.

My reading of the public mood is that this would not be a problem. As luck would have, it, I was actually talking late last night with a fund-raiser in my own riding, and I bounced the idea off him. He said that no, he would have no problem with it. He refers to himself all the time as just an average working stiff. So that is a sample of one, and I think it might be a useful sample.

Mr. Watson: But I am sure the same thing would apply to a United Way campaign, where someone figures up his tax and says, "Gosh, I've got more tax to pay than I knew I was going to have," and he can write some more off. It is just a matter of changing the date for those kinds of people. In businesses, people do it anyway. They certainly move it back. It has been done in the farming community for years. Right now, a person figures in December what his income is going to be, and decides whether to buy the new tractor before the end of the year or next year.

Mr. Evans: It is a valid concern. One of the people I have talked to about this matter is one of our central party fund-raisers, who pointed out--and I think he has got a very valid point--that our social system, namely the calendar year, really works to the detriment of fund-raisers in a lot of organizations. This is an individual who has been very much involved in the cancer fund as well. He points out that the month of December is an absolute dead-loss month to a fund-raiser. You cannot do anything, he says, virtually after the Santa Claus parade.

I think he makes a valid point. Fund-raising is very difficult, except for the Christmas Seal campaign, during that month. He was urging this as a kind of compensation for the way the year flows, and felt that it would provide a really positive incentive for fund-raisers after Christmas to get busy and get back out and wrap their job up for the year if their actual operational year ran to February 28. It is an idea for the consideration of the commission. I think that all parties would probably find it useful.

Mr. Watson: Yes, and I think your idea has merit far beyond its political party. I think it would have merit with any charitable group, because I can believe that raising money in December is a disaster, and yet for tax purposes that is when you can kind of twist a guy's arm and say, "Look, it's only going to cost you a little bit."

11:10 a.m.

Mr. Evans: That is right.

Mr. Breaugh: I would like to pursue a couple of points you touched on in a number of parts of your brief. The first one is the business of limits and advertising, which is a problem in several

different ways. I think most of us would share the idea we are reluctant to get into an American style of campaigning dominated by a media presentation which is astronomical in cost. But we are having some difficulty with the mechanics. How do we do that? What is the basic problem? Are we talking about a monetary limit as you have suggested, or some other monitoring of advertising campaigns?

Mr. Evans: The act now provides for limits on advertising within constituencies. Mr. Breaugh, I very much agree with some of what you have just said. I do not think we want to move entirely in the direction of the American style of campaign and I am afraid that is one of the dangers. We are almost there now.

When we have a party that spends \$3.3 million--I am sorry, I do not have the figures in front of me--and a very sizeable portion of that was spent on advertising, and an additional \$24 million of the taxpayers' money as well, we are almost at the Ronald Reagan-style Republican campaign now in this province.

I am sorry it seems like such a brief passing comment, but I pointed out at the beginning of our discussion on the recommendations that we would particularly endorse Mr. Mancini's proposal in his private member's bill to limit central party spending. I believe the formula Mr. Mancini proposes is 35 cents an elector and that works out to \$1.4 million for the province.

Those numbers may need some alteration. For instance, I would sit down with all of our organizers and take a look at whether we can run a campaign these days for \$1.3 million or \$1.4 million. You might want to talk to your people. Gerry Caplan might not quite agree, but the point is that some kind of reasonable limit needs to be imposed before we get to the situation I can foresee of \$10-million campaigns in this decade and that is outrageous.

Mr. Breaugh: I think we just had one. One of the problems I had was trying to sort through this. I am generally in agreement that limits are appropriate. You should not be able to buy an election which, in my view, is essentially what American politics are about, where a congressional campaign is running from \$225,000 to \$250,000 every two years. The end result of that, quite frankly, is that you have no alternative, you are locked into raising large amounts of money regularly. I am not sure the democratic process is particularly well served by the type of campaigning they are into.

One of the problems I see is, if for example, the Progressive Conservative Party spent a lot of money on an advertising campaign and in addition to that, for some reason, the government of Ontario got very active with the media at exactly the same time and they seemed to coincide, you can cry "Foul" if you like but there is nobody around who can do a damned thing about it.

It seems to me you are close to suggesting that the Commission on Election Contributions and Expenses be set up as some kind of monitoring agency in other than a strictly financial sense. For example, your problem in Dovercourt--

Mr. Evans: Yes.

Mr. Breaugh: The nifty part of that was, you might have said, "That is foul," and "People should not be able to do that kind of stuff," but there was nobody around who could do anything about it.

Mr. Evans: That is right. I want to make very clear that I am not pointing the finger here at either the commission or the chief electoral officer for their failure to do anything. They were quite right, they did not have the authority to take action under the injunction provided.

On the matter of advertising, I think we are saying that the commission, or some other public body with appointees of all parties represented in the Legislature, should have the authority to monitor advertising during writ periods under guidelines.

The guidelines we are talking about are the cessation of all unnecessary government advertising. It is clearly campaigning to have an advertising message flashed across your screen, immediately before us. I saw this three times, gentlemen, during the campaign: an advertising message from a government ministry closed with the minister's name followed immediately by a Progressive Conservative ad. There is nothing else you can call that but campaigning.

Mr. Breaugh: Would you extend it to include, for example, the use of civil servant staff time in preparing programs and announcements and just generally what is seen to be the noncampaign campaign that goes on. Are you advocating the expenses commission be set up as a kind of--the first rule of politics is there are no rules--place where you could go to cry Foul, that they should have some ability to monitor things which are not strictly financial statements and made some decisions.

This is my problem. In the middle of an election, do we really want some nonjudicial forum to be able to intervene, to come down and say: "Bill, you have to get out of the jet today. We do not want all those people from Intergovernmental Affairs writing new programs and advertising at large." I would approach that with some delicacy.

Mr. Evans: I would too. No, I would not want to leave the impression we want to create a situation in which the commission is forced to be a quasi-judicial body during the campaign. We think the courts are quite appropriate for the things that need to be dealt with such as the Dovercourt situation. The other matters should simply be put on the public record of the commission and that is quite appropriate to be done at any time, with the exception of the advertising limit controls I have talked about.

As to the matter of persons on the public payroll being involved in campaigns, I would very much like to encourage the committee to have a look at how we might control some of that. One obvious area of exemption from any kind of controls would be personal staff attached to members on a discretionary basis. But the area certainly needs examination. There is no doubt in our minds--I think I speak for our party as a whole on this one--that the abuse of the public purse has to stop in this area. People are getting offended by seeing this kind of thing. I would point out, the public is not as stupid as we sometimes--

Mr. Breaugh: Would like to believe?

Mr. Evans: They are not stupid at all. When ministers visit ridings, the public is very aware who the flunkys are who are tagging along. We now get articles in newspapers about that kind of thing. That is hurting the process.

Mr. Breaugh: This government is like any other government. I do not see it being very anxious to take away all the rights and privileges of a governing party. I would imagine they are going to be very anxious to preserve the use of all the staff and pooh-pooh the idea of advertising. The best we might get out of these people is some chance at fairness.

Mr. Evans: That is why we are suggesting--

Mr. Epp: Make a motion.

Mr. Evans: We will endorse that.

Interjection.

Mr. Evans: I am glad I have been able to take you this far. That is why we are saying we want the commission to have the authority to examine advertising spending. We think that is the key to it. We have to recognize that in 1982, television and radio advertising is a massive force in political campaigning.

Mr. Chairman: Very expensive.

Mr. Evans: Very expensive and we need to provide for reasonable controls and limits. If \$3.3 million is what it takes to run a campaign in this province, let us set the limit at \$3.3 million, but let us have some rules.

Mr. Breaugh: I think I have now run four federal campaigns. I do not have any problem with the limits as long as they apply to everybody and we all work within those rules. Frankly, I do not find the federal limits cumbersome at all. It seems to me they are quite reasonable.

Mr. Evans: I quite agree with you, Mr. Breaugh. The gentleman over here made some comment about finding federal campaign limits a problem. I would point out the federal election commission undertook a survey of candidates of all parties and, of the candidates of the three major parties, not one candidate complained that the limits were a problem. Some said the limits needed to be adjusted for inflation from time to time, and so on and so forth, but not one federal candidate in this country was prepared to say the limits should be removed.

11:20 a.m.

Mr. Breaugh: Let me move to another area that you touched on here and I think it is fair to say it is kind of the fringes around the purpose of the act and the way it is set up, one of which is municipal stuff, that ridings are I think in all political parties now, not to a great degree but to some degree, set up and

funded and monitored on a provincial basis and on a federal basis and they are beginning to participate in the municipal arena.

Both the federal and provincial acts have little loopholes in them or at least are silent on the matter. The best we have been able to get is a piece of legislation which allows municipalities to do a little bylaw on their own. Are you suggesting that we now go back to the provincial act and tighten it up in regard to the parties participating in municipal elections?

Mr. Evans: No, I am not. Tighten up, depending on how you want to use that word. What we are suggesting is, first of all, that we desperately need clarification in this area. There are municipal campaigns going on in this city right now where I know the people involved really do not know just what the heck they are going to do about this problem.

There is no question that there is fund-raising going on right this moment on behalf of certain municipal candidates using moneys transferred from provincial constituency associations. We are not saying that should be prevented. We are simply saying that the act should be clarified and that, if need be, a new piece of legislation be drafted to deal with the municipal level, or that the matter be included within the framework of the Election Finances Reform Act if that seems appropriate.

I think we have a real question here as to whether or not municipal politics is legitimate politics. If it is legitimate politics and if the principle of the essential fairness of the Election Finances Reform Act is a good one, then let us apply it to the municipal scene. My conversation with municipal candidates and municipal politicians is that they would welcome such a thing. I should say there are some exceptions and I really wonder if those people have something to hide.

Mr. Breaugh: In a couple of areas here you pointed out similar kinds of things, where money is raised under this provincial act and then used for slightly different purposes like somebody bankrolling a potential leadership campaign down the line. Are you suggesting that should be prohibited?

Mr. Evans: It should either be prohibited or specifically permitted. We would be prepared to discuss either option but we need clarification. That is the first point. My feeling is that it ought to be permitted. I make that as a personal comment having just, as you know, gone through the business of administering a leadership convention. It seems to me that a leadership convention is an absolutely fundamental part of the democratic system.

You people just had one as well. I attended yours part of the time as an observer. In your convention you attempted to do basically what we did, participate in a democratic exercise, and at some point the government party is going to do the same. It seems perfectly appropriate to me, as a personal comment, to move in that direction, but I will reserve my comments any further pending seeing what the committee thinks we ought to do.

Mr. Breaugh: Basically what you are suggesting is that in

those areas that you have identified as being almost like fringe areas, I suppose they were not considered very thoroughly when the first act was put through. What needs to be done is to clarify and set out the rules a little more clearly, rather than prohibit certain kinds of activities.

Mr. Evans: I think actually that Dalton Camp did very thoroughly consider the matter of leadership conventions. My understanding is he had motivations in recommending excluding leadership conventions because he saw the area as extremely complex. I do not think we have those problems any more. I would be fascinated to discuss with Mr. Camp details of why he made that specific recommendation. The point is he provided within the act--he was a participant in drafting it, I understand--a loophole there that is so wide you could drive a truck right through it.

It provides a kind of essential unfairness now because some municipal politicians might decide to take advantage of that act in that way. Some leadership aspirants might decide to take advantage of the act in that way. Others might be afraid to, for fear of having somebody throw rocks at them. That provides an essential unfairness in itself.

Our first point is, let us have clarification; and we would be more than happy to discuss from our experience, particularly with leadership campaigns, what kind of rules we ought to have.

Mr. Chairman: There is probably more justification for assisting leadership candidates, particularly the particular member who has the surplus that you are talking about, rather than assisting a municipal candidate, do you think?

Mr. Evans: I am sorry; I am not sure I see your point. I do not know that I would want to get into subsidizing leadership or municipal candidates at this stage, but I think very clearly we ought to provide openness and some control.

I do not know that it is necessary to provide subsidies. If we go to the extent of allowing candidates to use the tax credit subsidies, you are providing those subsidies from the public purse anyway, but you are leaving the option in the hands of the elector who chooses to donate money. I would prefer to see that option left open.

Mr. Breaugh: Are you suggesting in here--it seems to me you came pretty close to it--that when someone does raise a good deal of money the subsidy process should be eliminated for them? You made quite an argument here about A and B raising all that money and blowing it out the window, and probably the other side will say, "If is that gross, the public will react to it."

Mr. Evans: I can tell you that members of my party--not necessarily members of the Legislature, but active members of our party--are there already on that issue. I am not sure I am.

I think if we provide reasonable limits, then the subsidy is appropriate and the limits will take care of the problem. I do not think we need to get into the issue of whether we ought to take that subsidy away from somebody who spends too much money.

I think we should provide all kinds of punitive clout to the commission if somebody exceeds the limits. In the federal act, the official agent goes to jail. I think that is quite appropriate.

Mr. Breaugh: I must confess, in my area we had trouble raising \$15,000 and change, let alone \$132,000.

One of the difficulties we have with the act--and I must say the commission has been extremely co-operative, even to the point of being lenient with us--is that we have people who make trucks for a living trying to do an accountant's role and we have some problem with the paper flow. Are you experiencing similar difficulties?

Mr. Evans: Yes.

Mr. Breaugh: Is there anything we could do that would simplify that process?

Mr. Evans: Yes, I think there are a number of options. Let me reserve my comments by saying simply that I think the best simplification of the process might be to allow more involvement at the central level of the party in assisting their constituency associations in preparing returns. I think that is the answer.

I do not think you should bring in all kinds of bureaucrats and officials to create a whole new level of bureaucracy. That would be a mistake, and it would take away the responsibility from the constituency association. But there sure is a mechanism for allowing the central level of each of the parties to assist their constituency associations.

Mr. Breaugh: I guess my problem, in a nutshell, is that we always manage to conform by hook or by crook, but it seems to me that I always wind up carrying a cardboard box from somebody's kitchen up to our auditor and we try to sort it out there. I am a little fed up with that routine, and I am trying to find some means of simplifying the process.

We do have an auditor who saves our soul and we do have some assistance from the party centrally, but I would imagine most ridings are like mine in that they are made up of people who are not accountants, who do not do that as the normal part of their lives, and they are having some difficulty conforming to the pieces of paper and groping about to try to find some way to assist them, because that is the purpose of the exercise, to take people who are not professionals in that field and let them participate.

We have difficulty, for example, trying to find somebody stupid enough to be the financial officer, because they have had it for a while and they know what the headaches are.

Mr. Evans: That is why I suggest the party hierarchies are capable of dealing with that; at least, I know ours is. Mr. Bill Woods is here with me this morning. He is our party accountant, and he regularly spends hours assisting ridings in preparing their returns. In fact, he is the chief financial officer for a riding himself.

We see it as part of our responsibility to help our ridings in that way. We would just like to get into the process further, and I think we can do that internally with some amendment to the regulations.

11:30 a.m.

Let me say also that I agree with you. The commission staff and Don Joynt are a joy to work with. That guy is a great help on a regular basis to us to just get these little problems out of the way. I think the commission staff realizes that the general level of good will about performing the paperwork is high.

Most of our constituency associations are full of responsible people who simply want to comply with the terms of the act. Where we run into trouble is usually through innocent stupidity, not through any malice. I think we can deal with that problem that way.

Mr. Epp: Mr. Evans, getting back to your point 4, with respect to the use of money that has been donated to provincial associations for municipal elections--in other words, it is in a sense laundering your money through provincial associations for municipal purposes--how widespread is that?

Mr. Evans: I cannot comment across the broad range of the province. I know it to be reasonably widespread in Metropolitan Toronto. I know it to be fairly widespread in Metro.

I would comment that because it is happening on the part of some candidates, and because it is a serious advantage to some candidates, other candidates who do not want to do it are having to look at it.

It is very unfair to the fully independent candidate. The municipal candidate who is not affiliated to a party and does not have the ability to take advantage of this somewhat under-the-table arrangement is at a really serious disadvantage.

I do not think at the municipal level we want to prohibit the truly independent candidate from participating in the process, and that is why I think we need something done about this.

We may conclude that we want to take away the provisions completely, but we should recognize that this loophole is in the act now and that we have to do something about it one way or the other.

Mr. Epp: Have you had any discussions with the commission on this?

Mr. Evans: Yes, the commission is quite clear on the point, that the so-called "laundering" of money is illegal in the act, but there is no prohibition if no quid pro quo can be found. That is the problem.

Mr. Rotenberg: Can I have a supplementary to that?

Mr. Epp: Sure.

Mr. Rotenberg: Just to clarify: My understanding of the act is that no one can solicit on behalf of a municipal candidate through his party.

Mr. Evans: Yes.

Mr. Rotenberg: But if a riding association of whatever party wishes gratuitously to give a donation to a municipal candidate, it may do that and it is perfectly legal.

Mr. Evans: That is correct. That is the technicality. Unfortunately, we would be naive to think that it is entirely gratuitous. Fund-raising is going on right now.

Mr. Rotenberg: Under the new Municipal Elections Act, which is permissive to municipalities--you may be aware that is something we just passed in the Legislature--

Mr. Evans: Yes. I am sorry, I have not had time to study it in detail.

Mr. Rotenberg: My understanding of it, and I think I understand it, is that if a municipality passes an election expenses act--which is optional for municipalities so to do; it is permissive--then the rules are similar to a provincial act, which means a maximum contribution of \$500. That maximum of \$500 can be with respect to a person, group or association.

If a municipality implements the act, my understanding is that an association, meaning a riding association, would be limited to a maximum \$500 contribution to a candidate. A provincial party or two riding associations could give him \$500, or you could get around it some other way. That would kick in if a municipality used that option.

Mr. Evans: I would say that is a positive step. I would hope that a lot of municipalities would enact the legislation. The problem is that none of them has enacted it for this election, and a lot of them will be put in the position of resisting picking up on the legislation.

Mr. Rotenberg: I have one more question just to clarify. Is it your position, either your personal position or your party position, that this so-called loophole should be plugged and that provincial parties should not be able to donate to municipal candidates?

Mr. Evans: No, that is not our position. Our very narrowly defined position is that we seek clarification. It seems to me, as I think I indicated earlier when perhaps you were not here, that if we define municipal politics as a legitimate part of the political process, then the principles of the Election Finances Reform Act being good, it is appropriate that they should be applied to municipal politics.

If that is the sense of what you have done in the Municipal Elections Act, we would find that a positive step. The problem is, it has been left to the discretion of the municipalities.

Mr. Epp: Mr. Evans, would you permit them to put it to the provincial association for that purpose? Or are you suggesting that they still would be able to kind of put it through the provincial association?

Mr. Evans: I think in fairness to the independent--

Mr. Epp: For the same purpose that you should not be able to put your money for provincial purposes through the federal association, you should not be able to put money for a municipal campaign through the provincial association. They should be regarded as separate.

Mr. Evans: I would prefer to see provincial parties taken out of that arrangement.

Mr. Rotenberg: That is really the question I asked you.

Mr. Evans: Okay, I am sorry. I would prefer to see provincial parties taken out of that arena. I think we have to recognize that we are being very unfair at present to the candidate who is not affiliated to a party. I think a lot of people in this room were at one time independent municipal candidates.

Mr. Rotenberg: The only way I think you would be able to plug that loophole in the provincial act would be if all three parties were to agree that it should be done on some basis and then I think it would happen.

Mr. Evans: I guess what I am offering is our agreement to that.

Mr. J. M. Johnson: That's two out of three.

Mr. Evans: What I would like to say in addition to that is perhaps contingent upon making the adoption of these new rules, as you pass the Municipal Elections Act, compulsory.

Mr. Rotenberg: Can I just comment for a moment on that? One of the reasons it was not made compulsory was that to impose a full reporting system on many of these smaller municipalities, even a town of 400 people, where campaigns are done with very little money and really very little fund-raising, just did not seem to fit in.

Mr. Evans: I think I made that point in my submission, that perhaps we are really addressing a problem that exists only in the larger municipalities. We may well put a size limit on this thing. We may take a figure of 5,000 or 10,000 electors; in this gentleman's part of the world, I do not know what number would be appropriate.

I and many members of our party are very concerned about the effect that uncontrolled fund raising is having at the municipal level. We are all aware of examples that are at least questionable, and some of which have recently actually been taken into the courts. We see a real opportunity to provide a positive benefit to the municipal system by providing these controls.

You have reminded me very well of that act. I am going to take some time to go back and have a look at it.

Mr. Rotenberg: We put this through last spring.

Mr. Chairman: Do you have any opinion on whether candidates should run under a party label in a municipal election?

Mr. Evans: Our party traditionally over the past eight or 10 years has been opposed, and I think we will continue to remain opposed, to party politics at the municipal level. We are all obviously involved in municipal processes as political parties in one way or another, but in our view the level of involvement is satisfactory at present and we see no reason to bring party politics in. The Quebec experience is the classic example. I think it has worked very much to the detriment of politics in that province.

Mr. Chairman: The argument in favour is that it might increase the percentage of voters at municipal elections, which is rather pathetic right now, particularly if you have an acclamation for a mayor.

Mr. Evans: Mr. Chairman, I would like to digress from your point very slightly for a second to congratulate the government on the advertising campaign that it is about to undertake to encourage people to vote in the upcoming municipal elections. I think it is a very positive step.

I do not see party politics; in our view, the disadvantages of that mechanism outweigh the advantages. I am really not sure we would encourage that many more people to vote anyway. I do not think there is any statistical data you could use that would conclusively prove that.

11:40 a.m.

Mr. Treleaven: I would like to carry on from the chairman's comment, or the aside he made. Leaving aside a couple of exceptions at the high end and the low end, where a candidate was particularly successful or unsuccessful at raising money or simply did not wish to raise much money, if you leave those extremes--the \$100,000 and the fellow who ran a campaign on a couple of hundred dollars--do you know the expression, "break up the Yankees"?

Mr. Evans: I think I have heard it referred to.

Mr. Treleaven: Right. That came in the early 1950s, and maybe before, where one team was particularly successful--

Mr. Chairman: Now it is the Islanders.

Mr. Treleaven: --and those who were less than successful wanted to break up the successful team. Taking that as an example, do you not agree that there are a lot of facets in winning an election campaign?

Mr. Evans: Yes.

Mr. Treleaven: One is your organization, one is the quality of the candidate, one is the experience of the candidate, one is the number of workers he can attract to get out and put up signs, one is the number of signs put up and another is the money with which to buy those signs.

Do you not agree that the raising of money is one of the facets of a successful or unsuccessful election campaign?

I suggest that it could be conceived as sour grapes on the part of those who were less than successful to try to bring down the successful ones to the lowest common denominator.

Taking a facetious example, if a successful candidate wants to crank out 30 19-hour days in a row--which is and has been done--and can even stay alive, and his competitor wants to spend only 12-hour days and get a good night's sleep, why would you want to make a rule that all candidates shall be restricted to 12-hour days in campaigning?

If one fellow cannot attract enough people to put up his signs, you will only have 300 signs per riding, or whatever.

Mr. Evans: Mr. Treleaven, the very simple answer is probably best provided by people I have spoken to in the advertising industry who are shocked and amazed at the naiveté of the legislation when they find out that signs and literature are not considered, for purposes of the act, to be advertising. If they are not advertising, what are they?

We have already accepted the principle of limiting advertising. The principle is there. Your party has endorsed it. Your party passed the legislation.

Mr. Rotenberg: Media.

Mr. Evans: Media advertising. What we are suggesting to you is that the rubbish that is going on is offensive to the public.

I doubt very much that what we are suggesting is that we break up the Yankees. First of all, I do not think it is that good a team. I remember "murderers' row" very well. None the less, I would point out that nowhere in our submission have we said limits of any kind should be placed on fund-raising. We have said limits should be placed on campaign expenses.

Mr. J. M. Johnson: Just one very brief supplementary. How can you construe that some type of advertising is "trash" and that media advertising is not? The two could be the same.

Mr. Evans: When I use the word "trash," I am talking about the litter that I find on the street.

Mr. J. M. Johnson: Just the litter? Okay.

Mr. Evans: If we want to talk about lowest common denominators, that is the problem. It is all that kind of offensive thing that leaves people with a bad taste in their mouth.

Mr. J. M. Johnson: I submit it is both; it is trash either way.

Mr. Evans: That may very well be. Unfortunately, this is 1982 and television is a reality. I agree with you that an awful lot of what is going on in general political advertising is weak, to say the least. As responsible political parties, I think we ought to look at improving our mechanisms.

Mr. Mancini: I want to re-emphasize a couple of points, Mr. Chairman, since I did introduce a private bill into the House. It will be coming up for debate some time in the near future, and I am sure most of the members of the committee would want to speak on that bill, since we are doing the review of this commission. I want to re-emphasize the point--

Mr. Chairman: Remo, I do not know what has happened to you. You have lost your confidence or something. Get up close to that mike, will you? Shout like you used to.

Mr. Mancini: I want to re-emphasize the point that during the 1980-81 fiscal year, a total of \$25 million in public funds was spent by the political party in power to promote that government. That was double what the political party in power spent the year previously.

Mr. J. M. Johnson: Is this federal or provincial?

Mr. Mancini: No. We are talking about the Ontario Conservative Party, which is in power in the province.

Mr. Chairman: Ontari-ario?

Mr. Mancini: We also have, for the information of members of this committee, some figures they may find interesting. During the election period, the Ministry of Health spent \$386,000. What I find extremely interesting is that during the month of February, the Ministry of Agriculture and Food was able to spend \$311,000, although there's not much farming going on in February.

I also want to place on the record that my private bill establishes a limit of 35 cents per eligible voter for the province of Ontario, to be spent by the political parties. That would give you 35 cents times 5.5 million voters, or \$1,925,000, that could be spent by the central party. That is not peanuts.

The bill also includes provisions that the amount of money per voter would be tied to the consumer price index and adjusted on an annual basis. That would alleviate the concern raised by Mr. Evans that costs do rise, and that should be taken into consideration.

Mr. Evans: Good point.

Mr. Mancini: Further, the province of Saskatchewan has eliminated all government advertising, all crown corporation advertising or any agency of the government advertising during the writ period.

If we felt the need, we certainly could get information from that province as to how its system is working and how it has been able to work out any of the wrinkles that have developed. I have personally spoken to some people in Saskatchewan involved in this process and they say it is really not as difficult as it seems and they would be willing to provide more information to us.

I just wanted to highlight these points, Mr. Chairman, since we are now on this particular topic.

Mr. Chairman: Do you think that advertising during an election campaign by the three parties assists in getting out the vote?

Mr. Mancini: Do I?

Mr. Chairman: Yes.

Mr. Mancini: Yes, I do, Mr. Chairman.

Mr. Chairman: Why would you want to put such a low limit on it?

Mr. Mancini: For your information, in the last provincial election the Ontario Liberal Party spent \$1,178,000. My very reasonable limit would increase the amount of money that could be spent by any political party to more than \$800,000 above what the Liberal Party spent.

I think I have been very generous. The limit would be just under \$2 million, and that does not include any of the moneys that would be spent by the candidates in their own ridings. I would say \$2 million is a pretty hefty amount of money to encourage people--

Mr. Chairman: That sort of proves the point I am trying to raise.

Mr. Mancini: What's that, Mr. Chairman?

Mr. Chairman: It did not get the vote out.

Mr. Evans: Mr. Chairman, if I can respond to that as well, in the bill you have already accepted a limitation on the period of campaign advertising of 21 days.

Mr. Chairman: Yes, that's all right.

Mr. Evans: Providing limits to campaign advertising is an accepted principle. I think Mr. Mancini's direction, and we heartily endorse it, is to bring into the political process in this province an essential element of fairness so that the real problem of political parties being seen to buy elections is prevented.

11:50 a.m.

At the constituency level, our friends are worried about small and rural ridings. I point out that in the last election, in a riding we have not held in I don't know how long, Prescott-Russell,

Mr. Boudria won that seat, which has 44,000 voters and two campaign headquarters. It is 60 miles long and 30 miles across, and he spent \$27,000. I think that is quite appropriate.

Mr. Rotenberg: You have talked, I know, about campaign limits. The act now says donations in money or donations in kind must all be reported.

Mr. Evans: Goods and services, yes.

Mr. Rotenberg: The one donation that is not reported is the donation of time. I think Mr. Johnson raised this a little earlier. Let us talk about people who are giving more than a token thing. Let us say a person comes in and gives three or four hours every evening for a couple of weeks and weekends and so on; he or she gives 40 or 50 or 60 hours' worth of time to a candidate. Now that has a value. If we are discussing what people give to a candidate, and it is difficult, should that also be recorded and limited?

Mr. Evans: No. We would be strongly opposed to that. We don't want to do anything that would discourage the participation of the individual in the political process for the party of his choice. I think the act makes that clear, in that it selects goods and services for reporting only when the individual is normally compensated--I think that is the phrase used in the act--for that time or that work or whatever the service may be.

Mr. Rotenberg: I don't disagree with you but, taking that to its next logical step--I think Mr. Johnson already raised this too--if I, as an election worker, go to canvass a subdivision or to make a literature drop, I may go to 200 homes in a subdivision; it may take me five or six hours to do that literature drop. Or I could give those 200 pieces of mail to the postman and it is going to cost \$60 in postage. So I am going to donate \$60 worth of my time to drop it or I am going to hand the postman \$60 and let the postman drop it.

Is there really that much difference between that worker in the political process going himself and doing the drop or giving the \$60 to the postman for doing the drop? You say you want to limit the \$60 given to the postman but not the six hours of time at \$10 an hour.

Mr. Evans: I think there is a real difference between paying somebody to do work, whether it is the postman or one of these handbill delivery companies or whatever, which is a campaign expense, and the freely given time of an individual who is participating in the political process by supporting the candidate of his choice in whatever way.

Mr. Rotenberg: I want to turn that around and talk about the person who is donating. We all agree we should get as many people involved in the political process as possible. What I am asking is what the difference is from the point of view of the donor, not the receiver, between donating six hours of his time at \$10 an hour and writing a cheque for \$60. He is still donating \$60 worth of something, and you want to limit one and not the other. That is a bit of a dichotomy.

Mr. Evans: Frankly, sir, I think the dichotomy is already in the act, and I think it is a good one. There is a substantial difference. Obviously limits were placed at \$2,000 to a central party and \$500 to four constituencies on the recommendation of the Camp commission because it was felt by the commission, and by the government at the time the act was passed, that there was a possible abuse if campaign contribution limits were allowed to rise above that fixed level. Obviously Mr. Camp, and we agree with him, could find no abuse in the donating of an individual person's time.

Controlling contributions is very different from controlling expenses. I believe I made that point earlier.

Mr. Rotenberg: The point I am trying to make is not the controlling. I agree with the limits, but you are suggesting an overall limit, the number of people who can donate the \$60 or the number of people who can donate the \$500. That is where I think we part company.

I am asking what the difference is if I can get 1,000 people to give me \$60, which is \$60,000 and which is going to be more than the limit, or if I can get 1,000 people each to give me \$60 worth of time? For me, as a candidate, the man who gives me \$60 worth of time is far more valuable. I owe him more than the man who wrote me the \$60 cheque.

Mr. Evans: You will notice in the act thatd there is no limit on how much money you can raise, \$60 at a time, from 1,000 individuals.

Mr. Rotenberg: I think you were suggesting in your brief that we should put a limit on that. My understanding is that you want to put a limit on totals.

Mr. Evans: On fund-raising? No.

Mr. Rotenberg: I am sorry then.

Mr. Evans: On expenditures.

Mr. Rotenberg: All right; a limit on expenditures. In other words, you want to limit the total amount of money a candidate can spend in a campaign. You want to limit the number of \$60 cheques I can get--

Mr. Evans: No.

Mr. Rotenberg: Okay; I am sorry. You want to limit the number of \$60 cheques I can spend but you do not want to limit the number of \$60 donations in time I can spend. You are not going to limit me in the number of volunteers I can get out in my riding who are going to give me service worth so much money, but you want to limit the number of dollars I spend.

Mr. Evans: I am sorry, but I just do not see the equivalency. It would be perfectly appropriate for you to raise more money than you need during your campaign period. That money has to be handed over to your constituency association. It would be

perfectly appropriate for your constituency association to do a whole range of things with that in legitimate political activity. We have no problem with that, but we have a problem with the spending.

There is an essential unfairness. I would point out that while the candidate in the riding we mentioned earlier was out spending \$132,000, one of the other candidates was running a very fine campaign for \$27,000 but getting absolutely lost in the mess that was created by the \$132,000 spender, because he plastered the place offensively.

Mr. Rotenberg: But one candidate may get 500 workers out there knocking on doors four and five times, and another candidate may get only 50 workers knocking on the doors once. Now you are plastering the riding with people who are giving--

Mr. Evans: Giving freely of their time, and we would encourage that.

Mr. Rotenberg: Rather than giving freely of their money. If you are going to limit the total campaign, how can you limit the money I can spend on a campaign and say I can have all the workers I want out on the streets who are donating?

Mr. Evans: I come back to my original point. We are not suggesting limits on fund-raising, other than the ones that are already in the act.

Mr. Mancini: Mr. Rotenberg, your party already agrees to some limitations, because your party has passed the media advertising limitation; so you have already accepted the principle that there should be some limitations.

Mr. Rotenberg: That is limitations on the overall campaign. I am talking about your own riding campaign and my own riding campaign.

My feeling is that anything I can get donated I should be able to spend as long as every donation is reported. I agree with a maximum limit on any one person donating, but if you are going to have everybody report the dollars they give me, which is legitimate and I agree with it, maybe you should have people report the time they give.

As I say, if the purpose of putting a limitation and a reporting on dollars that are donated is to prevent an abuse of the system--anybody in effect "buying a candidate"; that is one of the reasons it is done, so you will know who a candidate may owe something to--as I say, I as a candidate owe far more to the guy who gives me the time than the guy who gives me the money. Should we be reporting on all the workers?

Mr. Evans: Mr. Rotenberg, Mr. Camp and the government have already recognized that there should be limits on campaign advertising even within your constituency. The principle is there to prevent abuse. We are highlighting another area of abuse; it is real, it is there and it is offensive, and it ought to be stopped.

Mr. Rotenberg: Let us say there is a by-election coming up. Would it be an abuse for a candidate in the by-election to import workers from all over the province and flood the riding with workers from elsewhere? Is that also an abuse of the system?

Mr. Evans: No.

Mr. Rotenberg: A candidate can bring in 50 or 100 people from outside and that is not an abuse? Spending dollars is an abuse but spending volunteer time is not an abuse?

Mr. Evans: If Bob Rae or John Nunziata or Barbara Jaffelice can get Ontario citizens to support them and to come to York South and work their butts off for them, I say more power to them. That is not an abuse.

Mr. Rotenberg: I agree.

Mr. Evans: That is the free right of a free citizen in a free society to participate in the process.

Mr. Rotenberg: Then why is it not a free right of a citizen to give one of those three people a cheque to have it spent on the campaign?

Mr. Evans: We are not suggesting anything to the contrary. It is their free right to give a cheque, and we would encourage them to do so and to continue to do so, but the legislation that your party passed in 1975 already contains the principles in it that you are arguing against.

Mr. Rotenberg: I guess we just agree to disagree, which makes this interesting.

Mr. Chairman: Are there any further questions?

Mr. Rotenberg: There are a few more things we disagree on.

Mr. Chairman: Does any other member of the committee have questions?

Thank you very much, Mr. Evans, for your appearance and for an excellent submission on behalf of your party. We appreciate the points and your frankness. It has been a great morning.

Mr. Evans: Thank you, Mr. Chairman. I have enjoyed it.

Mr. Rotenberg: I am one of the few elected members on our side of the House where a Liberal opponent spent more than I did on the election campaign.

Mr. Watson: I am just looking at St. David.

Mr. Chairman: Order, gentlemen. Do we have Ms. Mary Lou Gutscher, president of the Unparty Party? That would be UP, United Press. If she is not here, gentlemen, we will adjourn until 2 p.m., when we will hear from the New Democratic Party.

The committee recessed at 12:02 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

AGENCY REVIEW: COMMISSION ON ELECTION CONTRIBUTIONS AND EXPENCES

WEDNESDAY, SEPTEMBER 15, 1982

Afternoon sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breagh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
McLean, A. K. (Simcoe East PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Also taking part:
Renwick, J. A., (Riverdale NDP)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher, Legislative Library

Witnesses:

From the New Democratic Party of Ontario:
Dale, E., Administrative Assistant
Murray, J., Former Provincial Secretary
Nayman, B., Auditor

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Wednesday, September 15, 1982

The committee resumed at 2:15 p.m. in room 151.

COMMISSION ON ELECTION CONTRIBUTIONS AND EXPENSES
(continued)

The Acting Chairman (Mr. McLean): I see a quorum. Mr. Renwick, I understand you have a presentation you would like to make to the committee.

Mr. Renwick: Yes, Mr. Chairman. Let me, first of all, introduce my colleagues who are with me.

On the far left is Jack Murray, who is the immediate past secretary of the party and the penultimate past president of the party and who is, of course, is very familiar with the procedures we want to discuss this afternoon.

On my immediate left is Ed Dale, who is the executive assistant to the present secretary of the party, Michael Lewis.

On my right is Bernie Nayman, who is the auditor of the party and performs all the accounting and auditing obligations under the act, which is in front of us.

I am here in my capacity as chairman of a committee made up of representatives of the party, some from the executive, some from other areas of the party and some from the caucus of the party, which became very anxious immediately following the 1981 election to have a look at the election finances law of the province in its day-to-day operations, as illustrated in the results of the 1981 election, and because of the ancillary factor of the redistribution of the seats of the Legislature. I would like to touch upon that a little bit later.

I may say that we have no written presentation, for any number of reasons, but the only one I would like to disclose to the committee is that we are in the process of our discussions within that committee, to which I have just referred, touching upon a number of points. We have not finalized our positions for recommendation to the executive and ultimately to the council in the convention of the party about electoral law and its implications for our party.

What we say is not written on stone and is not of necessity the policy of the party. Indeed, if anyone should ever indicate that it was the policy of the party, I would immediately reply that no, it was simply my personal view on the world. I do hope, however, that we can have a very valuable exchange in a number of areas.

I think it is fair that the committee can assume we are satisfied with the various provisions on which we choose not to comment.

I may say that this is the first opportunity I have had to formally pay my tribute and the tribute of my colleagues to the work done in the commission by the former chairman, Arthur Wishart, and to express to the committee our deep regrets at the untimely death of James Auld, just as he was entering upon his work as chairman of the commission in succession to Arthur Wishart. Mr. Wishart continues to enjoy good life, of course, and in regard to Mr. Auld, it was an unfortunate tragedy for us that he was not able to continue in the position to which he had appointed been so recently.

Without in any way suggesting that the tradition will be departed from, we look forward to the decision by the Premier as to who will chair the commission in the next little while. I think there are sufficient number of former Conservative cabinet members around so that he will be able to select one from that group, at least, who could usefully perform the position of chairman of the commission.

The only instruction I have from all of my colleagues who know the day-in, day-out work of the commission is that I should advise the committee that the administration of the commission, the courtesy of the staff, the way in which the act has been administered as a whole and the relationships between our party and the commission and its staff can only be characterized as excellent. If your committee is thinking at all of putting a sunset on this commission, we would simply urge not only that it survive but also that it build on the very sound foundations that have been established for it.

The second reason, of course, why we urge that the commission continue is that the electoral law of the province, particularly matters related to electoral financing and the ancillary matter of the distribution of the seats, is the very guts of the democratic parliamentary tradition of government. We have moved some way towards an emphasis on equality of participation of the political parties in the field, but we still have a long way to go.

I think there are some very useful changes the commission could consider to make certain that the destructive effects of the excessive cost of elections and of unbridled expenditure of funds by political parties and by candidates are curtailed. I need not point very far to say that one of the things we must achieve is to make certain that work in the electoral field is available to every citizen and not restricted to persons who happen to have the resources privately that they can enter that particular world.

2:20 p.m.

With those remarks we, in a sense, would like to use four particular headings to conduct our discussion. In the first one, the area of accounting, not necessarily in this order, my colleague Mr. Nayman will comment about any of the accounting and auditing questions, of course. The contributions and that whole area of the revenue side of political life in a political party will be dealt with by my colleagues Mr. Murray and Mr. Dale. I think we would all like to contribute to the extent that time is available to us on the other side of the coin, that is, the question of election spending and the aspects of election spending which are of concern to us.

But before turning to those, there are three other remarks I would like to make. These three miscellaneous points have no particular connection one with the other. One of our concerns is reflected--I need not refer to the details of the sections, but for the purpose of the record--in clause 4(1)(g) and section 53, which relate to the question of prosecutions. The one requires information to be furnished to the Attorney General; the other one is ambiguous with respect to the prosecution of offences under the act.

I and my colleagues noted with interest that in the seventh annual report there was a reference to the commission having prosecuted a particular case. It is our view that the commission should be vested with the sole responsibility and the obligation to enforce the act where necessary by prosecution, and that it should not be necessary for the commission to consult with or otherwise deal with the office of the Attorney General, other than in the normal courses of laying an information in the ordinary course of events in the normal process of the administration of justice.

There is a second matter that I and my colleagues have been concerned about. I say this with great diffidence, and I do not wish it to be misunderstood in any way; there are three political parties represented in the assembly, and my comment is not in any way to be taken to limit the entrance into the field of other bodies of people who wish to join together to be represented as a political party.

I and my colleagues are concerned with clause 10(2)(d), the clause dealing with the registration of political parties, which provides for the signatures of 10,000 persons as the condition precedent, and the sole condition precedent, to applying to the commission for registration in the register of political parties.

It is our submission that, in addition to the names, there should be some other minimal requirement or requirements with respect to an application to register a political party. There should be at least some form of constitution for that party or some governing body of rules related to those who are coming together to be represented as a political party, other than simply the obtaining of the necessary number of names.

We have not given a great deal of further thought to what those condition precedents may be, but we would ask that it be a matter that is taken under consideration by the commission if it is deemed worthy of consideration.

The next item is probably a personal James Renwick contribution to the discussion and that is, without entering the whole of the area of fund-raising events under subsection 24(1), it should be possible to fashion a limited form of lottery on, say, an annual basis that could be conducted once a year by a constituency association as a fund-raising event.

Everyone now knows that it is not possible, legally, to have a lottery for fund-raising for a political party. That was cut out at the time the lottery act came into force. I think it was an accepted and traditional method by which the riding associations in the New Democratic Party tried to raise some funds in the competing world of fund-raising. For example, in my own riding of Riverdale, we

conducted quite successfully, until the lottery act came into force, the 300 Club.

I am talking about a limited form of a lottery perhaps fashioned in such a way that once a year a riding association could raise a few dollars or without offending the lottery law.

The next point is that we consider, in our discussions in the committee which I chair in the party, a suggestion--I think perhaps more than a suggestion; in due course, it would be a firm recommendation of ours--that the whole question of the redistribution of the electoral seats in the province be added as an additional major function of the commission.

We have given some thought to that matter, and I will be introducing into the assembly a private member's public bill, when the session resumes in due course, reflecting the way in which such an additional function could be added to the commission.

Sufficient to say that it does seem to us that the permanence of this commission would indicate that the chairman of the commission and the chief electoral officer could very well be the body which was responsible, together with representatives from each of the three political parties, for carrying out the decennial redistribution of the seats in the Legislative Assembly on the basis of the information obtained from the decennial census.

I need not go into any further details about that matter, but I am quite happy to let the committee have a brief research paper which was done at my request by the legislative research service, "The Redistribution of Electoral Districts in Ontario: A Comparative Perspective," which is an attempt to set out very briefly and, indeed, very well the present system and two or three comparable systems for doing that. I can leave that, if I may, with the committee.

As I say, a bill mirroring our interest in this topic will be placed, I trust, on the Order Paper later on this year.

Sufficient to say that there is no statute similar to the statute in the federal Parliament providing for a statutory basis for electoral redistribution, and the memorandum I have just submitted outlines briefly the rather archaic and perhaps inappropriate method currently used in Ontario. But we would urge that additional function be considered as a substantial contribution in our submission to your committee and that extra dimension be given to the commission.

2:30 p.m.

I would now like to ask my colleague Jack Murray if he would speak to the question of contributions, along with my colleague Ed Dale. Unfortunately, I may well have to leave the committee because of the Toronto Board of Health appearing before the social development committee, in which case I will have to be in attendance at that time. When I leave, Jack Murray will act as co-ordinator of our presentation. Jack, would you speak to those contribution areas of the bill, about the commission's work?

Mr. Murray: Thank you, Jim. Mr. Chairman and members of committee, I will try to be brief, because we do not have that much to say in this area and because we would like to leave time for questions.

With respect to the limitation on cash, which appears in two sections--one concerning contributions for membership and another concerning cash donations--we find that the limitation of \$10 is an unreasonable burden in these times. With money having its current value, in our opinion limits on membership and on cash should be raised to at least \$25.

The other area where we have experienced difficulties over the years is the simple administrative cost to our party of doing the administrative work necessary to meet the requirements of the act. This was not expected and there is no direct subsidy to the central party in the way that there is subsidy to campaigns at the riding level for the ongoing work that happens every year.

We would hope that there would be some direct support to the party, perhaps in the way that New Brunswick produces a subsidy of \$1 a vote per year to each of the parties and/or a checkoff on the income tax as originally proposed by the Camp commission.

Mr. Rotenberg: Is that \$1 a vote or a \$1 a voter?

Mr. Murray: One dollar a voter.

Mr. Rotenberg: You said \$1 a vote, and that is a different connotation.

Mr. Murray: I am not sure of that. I would have to look that up. I understand the difference, but we are simply making the point that there is extra administrative cost and that there has been no subsidy for that as there has been a subsidy for elections as such.

We are strongly of the opinion that the checkoff of \$5 on the income tax, which was originally recommended and which has never been implemented, would be appropriate and would allow more widespread participation in the political process and alleviate some of the cost that the centre of the parties must endure.

The whole matter of contributions or limitations on contributions is of questionable value when there is no comparable limitation on expenditures. Our party is a unified party. This is, in fact, the Ontario section of the New Democratic Party of Canada; so we work from our office with both acts.

We find the expenditure limitations of the federal election act a very reasonable approach to equalizing the capacity to participate. We would certainly hope that something similar could be brought into Ontario because, as the data especially from the last election show, the limitation on contributions has not had the intended effect in terms of equalizing the capacity to participate.

At that I shall stop, and I shall pick up this point later.

Mr. Renwick: Do you have any comment that you wish to make?

Mr. Nayman: Mr. Chairman, I was the auditor of the Ontario New Democratic Party before this law was passed and afterwards. I am also the auditor for all the riding associations, or 90 per cent of them, in Ontario.

All I want to do right now is just repeat what was said before about the administration of the act. It has been extremely well done by the commission and its staff. I have been of some assistance to them, since I do so many of these things. I find the atmosphere to be very co-operative.

As far as the act is concerned, I think most of what I had to say has already been said; so I will not go on to anything else.

Mr. Renwick: Then perhaps we could turn to the matter that is of major concern to us in the party, and that is the whole ambit of expenditure limitations.

I might make one other point we have at least discussed in our committee, and we have not come to any particular conclusion about it. Indeed, I do not know whether in our final report, to be submitted to the executive in our policy-making process, it will be one of the recommendations.

We have given some consideration to the Quebec system of limiting contributions simply to individuals and eliminating the question of contributions from other than individuals. I emphasize the reservation which I had on that. There is a lot to be said in the theory of democratic parliamentary government about going to that particular basis and eliminating contributions in our case, under our act, from corporations and trade unions.

Mr. Chairman: Mr. Renwick, would that not have a substantial effect on the amount of contributions to your party?

Mr. Renwick: I think the world is relative, Mr. Chairman, and the contributions to other parties, perhaps from the corporate world, would offset any negative effect that would have on the New Democratic Party.

From the point of view of theory, I think it is a matter that we will be discussing at some length. We have not yet done so with the trade union movement as such, and we have not discussed it any further in the party; but it is certainly one of the matters on our agenda for discussion.

Now I would like to turn to the whole question of expenditure limitation. Again, I would ask my colleague Jack Murray to lead off, and of course Ed Dale and Bernie Nayman will comment, as will I if it seems fit to do so.

Mr. Murray: Our experience with the limitations on expenditure has the federal act as our model. Those expenditures are put together with some direct subsidies. The direct subsidy on media, for example, is a dollar subsidy for every dollar spent on central advertising. That, as you know, is also tied to the

apportionment of free time and to controls on the amount of advertising that can be purchased on the public media.

The total amounts are controlled both at the constituency level and centrally. In the case of the ridings, there are controls which are adjusted for small ridings. We find those limitations reasonable. They are tied to the cost of postage; as it rises, the amounts of subsidy rise.

2:40 p.m.

When we are trying to equalize the opportunities for the various parties to put their message before the public, and when the media have such an overwhelming effect on the way in which that message can be delivered these days, we find it most appropriate that consideration should be given to limiting total expenditures, limiting expenditures on media, and apportioning the access to the media among the active participants in the election process.

I would add one other thing which is a subnote, and that is that the control in this act on advertising immediately prior to the election is one area where we find enforcement nonexistent. We would suggest that either the limitation on paid advertising the day before the election should be withdrawn or it should be enforced. It is the only section of the act that, in my personal view, is somewhat of a mockery at this point.

Mr. J. M. Johnson: Why do you say that? What exactly do you have in mind?

Mr. Murray: Billboards, ads in papers--

Mr. J. M. Johnson: Are you sure you are not just talking about the press?

Mr. Murray: Some press; there is some difficulty with the press.

Mr. J. M. Johnson: The elections are Thursdays and the press publication is Wednesday, the weeklies.

Mr. Murray: There is an exception. The main problem we had with the last election was Toronto Transit Commission advertising and billboards.

Mr. Rotenberg: They should have come down the day before that.

Mr. Murray: They did not come down until well after the election, nor did the transit ads.

Mr. Chairman: You are saying that type of advertising was being used prior to the issuance of a writ?

Mr. Murray: This is immediately prior to the election.

Mr. Chairman: And on election day.

Mr. Murray: Yes. The day before the election and election day.

Mr. Chairman: In other words, it should come down.

Mr. Murray: It should come down. When it does not come down and you are in that kind of a time bind and the advertiser said, "We made arrangements," etc., and many of those ads stay up all through election day, it is somewhat frustrating. To my knowledge, there is no place that one can appeal to have that rectified and there is no place you can go in advance to get assurance that those ads will come down. I am not pushing the current ban; I am simply saying that is a problem.

Mr. Chairman: It is very handy if you are riding the subway to the polls.

Mr. Rotenberg: Should there not be a distinction between continuing advertising, such as billboards, and something that is put in the press the day before election? Is that what you are getting at, or would that be something--you say the present system is unenforceable--where you might consider there should be some distinction?

I can understand if you put up a billboard for three weeks and it is hard maybe, for whatever reason, to get the billboard taken down, which is different from constantly putting an ad in the Toronto Star the day before the election.

Mr. Murray: The problem has been more with public outdoor displays.

Mr. Rotenberg: Outdoor displays again are put up on the TTC cars and you may have difficulty getting them down on the Tuesday night before the Thursday election.

Mr. Murray: I do not believe there have been widespread abuses in the print media.

Mr. Rotenberg: It is with the continuing advertising that you have a problem.

Mr. Murray: Yes.

Mr. Chairman: It would not include lawn signs and posters and things like that.

Mr. Murray: Not that stuff on private property, no.

Mr. Mancini: I was not able to be in Toronto during the last provincial election. These billboards and transit stop ads you are talking about, were all parties involved in this?

Mr. Murray: No.

Mr. Mancini: Was there one or two parties?

Mr. Murray: There was one that I am aware of.

Mr. Chairman: That is enough for you all.

Mr. Mancini: I just wanted to know, because I was not able to be here. I am shocked we were not able to buy--

Mr. Chairman: You are taking a 50-50 chance.

Mr. Mancini: No, I am shocked that we could not afford that type of ads.

Mr. Chairman: Have you anything further to add?

Mr. Murray: We do not have a formula for limitations. Again, our model is something analogous to the federal limitations, which now put limits on ridings in many cases between \$40,000 and \$50,000, which I think is a reasonable kind of sum to spend to deliver a message in that period. The advertising, of course, is over and above that.

Mr. Chairman: Regarding your comments about billboards and advertising in buses, actually what you want is enforcement of the present act. Is that not sufficient?

Mr. Murray: We would be pleased with the enforcement or, if that cannot be achieved, we would prefer the pretence be dropped, that is all.

Mr. Nayman: The Camp commission report did address itself on the limitation of expenditures, and the conclusion it came to was to limit or shorten the campaign period. They said that would obviously decrease or limit the amount spent. However, in the last three or four elections one can see that this has not taken place.

There should be some direct limitation on the expenses in the federal format so as to allow anyone to run as a candidate, and not only people who can waste hundreds of thousands of dollars.

Mr. Renwick: There are a couple of other more difficult aspects of the expenditure problem which we would at least like to touch upon. One cannot help being somewhat partisan about these questions, and we have prepared a schedule of what we call the Progressive Conservative largess which was handed out during the course of the election with respect to obviously targeted ridings.

I say that advisedly; they are actually announcements made with respect to location of particular incidents and particular expenditures to be made in various ridings. We have all of them made, of course, by the government in its position as government, but there is no doubt that parties sitting in opposition cannot match this kind of largess. I have no idea how one goes about preventing the government in power from using that method to influence the results of the election.

The particular largess is set out in this memorandum. We believe it to be an accurate statement of the extent and degree to which the party in power uses these announcements of the future expenditure of government funds to influence the course of the election.

The second aspect is also extremely difficult to determine in terms of its limitations but undoubtedly it affects the overpowering influence which the Conservative Party exercises during election time in advertising, and not only within the limitations of the act as such. When you add to that the extensive immediate pre-election period and election period form of so-called governmental institutional advertising, which is barely disguised party advertising, then in our view you have a serious inequality in a democratic system with respect to the capacity of the parties to participate on an equal basis. I use the term "equal" in the sense of the extent that each party can attract to it support, financial and otherwise, by people interested in that party during the election campaign.

Those are questions, I suppose, traditional with all governments. Some people are prepared to bow to that and say that is the inevitable price that opposition parties pay and the inevitable fruit of the benefit of sitting in power of the existing party. I know my colleagues in the Liberal Party have expressed their concern in the House about this use of so-called institutional advertising by the government, which is really barely veiled electioneering expenses.

2:50 p.m.

Mr. Lane: Mr. Chairman, can I have a supplementary on that one in particular?

Mr. Chairman: Yes, all right.

Mr. Lane: Mr. Renwick, when you have, as you have there, three or four sheets of policies to be announced, or whatever, it seems to me that could work in reverse to what you are saying. We have to put them on the line. If we say we are going to, then it has to happen. Somebody trying to unseat us could go one up and say, "If we were the government, we would be doing better than that."

It has already been laid down before you in print what the government is going to do. If I were in the opposition party, I would be trying to upstage the government with this type of communication. I have heard some promises in my time; you can promise the moon as long as you don't have to deliver. The government has to follow through with its promises, or at least it should.

Mr. Renwick: Of course, in any reasonably equal election campaign, each party would have to be in a position where it could achieve the government to fulfil the promises it had made and would pay whatever the electoral price was. The start of the process of anteing up by each party is generally precipitated by the party in power in the pre-election period, announcing the grandiose plans that were announced, for example, when the BILD program was announced, immediately prior to the election campaign taking place. That is what precipitates the outbidding operation.

Mr. J. M. Johnson: That was a coincidence.

Mr. Renwick: I know it. I recognize it was a coincidence.

Mr. Rotenberg: Jim, you would not preclude the government from doing any actions or making any plans in X days before the election, would you? Do you expect the whole process of government to stop simply because an election is coming?

Mr. Renwick: No, of course we do not expect the whole process of government to stop because of the election. In fact, the whole process of government does stop while the election is going on. The cabinet may meet to deal with certain emergency matters from time to time, but everyone knows that for the 42 days of the election campaign the government of the province is handled basically by the civil service of the province, apart from emergency needs.

I do not pretend, and we do not pretend, to do other than to point it out. We have no magic about what the limitations should be. I could put it this way: We could live with this act with respect to expenditures and cope with the inequality between the number of dollars available to the Conservative Party in relation to the Liberal Party and the New Democratic Party if there were some way of controlling this immense add-on of the largess of the government during the election campaign and the tremendous expenditure of public funds disguised as institutional advertising.

I think that is a very serious problem if we are looking towards the guts of the parliamentary system in the sense of equality, which is what we believe the democratic system is about.

Mr. Rotenberg: (inaudible) equal?

Mr. Renwick: I recognize it would be extremely difficult to be nonpartisan about the points. But if one sits back objectively, the perpetuation in power of a party is assisted in large measure by the levers which the controlling government party has to distribute this kind of largess. I point out to the committee in its nonpartisan sense that that is very disruptive of the democratic process.

Mr. Chairman: Do you have a limit, Jim? Would you say 30 days before, 10 days before or--

Mr. Renwick: I think that any time limit is, of necessity, arbitrary. I don't think I would have any great difficulty with 30 days or 45 days. Taking the last election campaign--I forget the exact date of the coincidence; perhaps Mr. Johnson would help me--the BILD program was announced in--

Mr. J. M. Johnson: January.

Mr. Renwick:--January and the election was called on February 2. Leaving aside the Christmas period, I think that if one has to be arbitrary about it, six weeks or two months is not a bad period of time to enforce a limitation on government largess. If they want to make any statements prior to that time, fine. That is quite satisfactory.

Mr. Rotenberg: Just a point: Do you want us to clarify as you go or would you rather finish your presentation? Would you rather have questions as you go or do you want to finish?

Mr. Renwick: We have basically finished our presentation. Any comments you might make--

Mr. Rotenberg: There were two things on the last point you made. When the date a writ is dropped is really a discretion, how can you enforce it? If you are saying 60 days before the election, which is 23 days before the writ, how can you say a government cannot do anything when they may not know when the writ is going to be dropped? I can see, practically and logically, say during the writ period, certain things cannot be done, but prior to a writ being dropped, when there is no set date, it is pretty difficult, isn't it?

Mr. Chairman: People may forget.

Mr. Renwick: Yes, that is a very serious problem. It may well be that you have to rely on the government not to anticipate what is privy to them, the knowledge of the election date; to observe in a sense the restriction on their largess.

Mr. Rotenberg: Taking this one step further--we may not agree on the philosophy, but let us try to understand what the philosophy might be--you would preclude the government from announcing a specific project. Would you preclude the government from saying, "If we are re-elected, we will do this project," which has a slightly different nuance?

Mr. Renwick: Oh, no. I have no problem with promises.

Mr. Rotenberg: I see. In other words, they cannot say they are going to widen the highway in the Riverdale riding, but they can say, "If we are re-elected, we will widen the highway in Riverdale riding."

Mr. Renwick: Yes, and we can make known whatever our own particular view would be.

On the question of your not being able to forecast what the election date is, I would guess from the election experience I have had that within broad limits, within the two months' runup to an election, most politicians around can spot when the election is going to be. I can only recall one occasion when it looked as though there was going to be a spring election and it turned out to be in the fall.

Mr. Rotenberg: Going back to our experience of a year and a half ago, when it came out on March 19, the speculation may have been two, three, four or five weeks later. In that period of two weeks before the writ was actually dropped, it would have been somewhat difficult possibly, if I was not privy to the scheduling, to decide whether some ministry could or could not have announced a particular thing.

In effect, if the government signals, "Yes, we are going to drop the writ on such and such a day," and says to all ministries, "Thou shalt not make any announcements in this, say, 35 to 60 days, in a 25-day period," it is announcing the election 25 days before it announces it, which I do not really think is contemplated in some other sections of the whole process.

Mr. Chairman: Everybody would know about it within 24 hours.

Mr. Rotenberg: Within 24 minutes.

Mr. Renwick: If we solve the conundrum in our further deliberations on it, we will certainly let you have the benefit of our wisdom on it.

Mr. Rotenberg: I may not necessarily agree with the philosophy, but I see a case being made for its not being during the writ period. But prior to the writ period, I can see some real problems in practicalities.

Mr. J. M. Johnson: Jim, further to that, in the two periods when we served in minority governments, there were many possibilities of an election. At that time, the government might not be responsible for calling an election.

Mr. Renwick: No, I have never subscribed to that view of minority government. I have only had the experience of the two, but there has never been any illusion in our party that the government would not call an election if, as and when the government decided it was in their interest, apart from procedural slips of the House. That is what, in fact, occurred.

3 p.m.

Mr. Rotenberg: I think what Jack is getting at is there were a number of no-confidence motions put forward by your party that the Liberals did not support and vice versa. If you had got together on a no-confidence vote, there would have been an election called within a day or two. In that situation, how could a government (inaudible) all through minority government for 12 or 20 days before a no-confidence vote, because the writ might be dropped. There are always practical problems.

Mr. J. M. Johnson: An example of miscalculation would be in Ottawa, before the last election.

Mr. Rotenberg: Yes.

Mr. J. M. Johnson: It did not happen in Ontario, but it quite conceivably could have happened.

Mr. Renwick: That was a miscalculation by the government in power.

Mr. Chairman: The type of thing you are worried about would not happen unless it were accidental. There would not be the motive that you are concerned about.

Mr. Renwick: That is right. We joke about the Board of Industrial Leadership and Development program. In fact, the BILD program was an election manifesto. It is that kind of manifesto and the carrying out of that which may be accepted politics, but we wanted to draw to your attention that it is very destructive of the kind of basic equality of parties to be able to attract support at the polls as envisaged by this act and is not addressed by this act.

Mr. Lane: Going back to my original question about having something set out for you, a program by the government, that (inaudible) one-up. If you had a BILD program, which as you pointed out was set out a week ahead of the writ, why would it not have been possible for any opposition party to put forth an idea that would have been more appealing than the BILD program? You already knew what it was. We were going to go with that; so you had our projection, so to speak. Why could yours not be one better?

Mr. Breaugh: Maybe if you give us \$20 million to advertise it we would.

Mr. Renwick: In the electoral scene in Ontario, I would guess what you say is a perfect example of a bird in the hand is worth two in the bush.

Mr. Lane: I went through a number of elections. Some of the promises I hear opposition people making during the campaign are such that if their party were ever elected, somebody would be seriously embarrassed here, because it just could not happen. I have to make promises that I know the government can fulfil if it is back in power again.

What I am saying is that it works both ways. We have to set out what we are going to do. You people now have a guide to what we are setting out; so why do you not one-up us and say, "We will do a lot better than that"? That is what the guys do out in the field in my part of the world anyway. They say how great it will be if they knock this guy off and put us in his place, which would be more cost if it were to happen.

Mr. Chairman: You indicated that you were not concerned about promises.

Mr. Renwick: They take care of themselves. That is what the election is about. You are attempting to attract trust from the electorate. Each political party is subject to its own limitations on that capacity.

Mr. Charlton: If I could just comment on that matter, the difference is that Mr. Renwick is saying we do not object to promises. The largess he is talking about is a government which is still administering the province even if that is not happening on a day-to-day basis.

The Premier comes into a riding--and Mr. Renwick referred to targeted ridings, and there were targeted ridings in the last election in this province--and actually puts in place a new program for \$4 million, not making a promise that "If we get re-elected, we will do this, that and the other thing," but actually coming in with a cheque in hand or coming in for a signing ceremony to put a new program in place. That is the kind of largess Mr. Renwick is referring to as opposed to the question of election promises, "We will do this if we get re-elected."

Mr. Chairman: All candidates should be invited to that ribbon-cutting ceremony.

Mr. Rotenberg: I would like to pursue a bit philosophically the problem of limitations on expenditures. We went through some of this this morning with the Liberal Party.

First of all, I think you would concede that the federal act at the moment has some very big holes in it. We would not want to model after the federal act. The big hole is that if I know a writ is going to be issued next week, I can go to my printer today and give him a cheque for any amount of money I want and give an order for unspecified printing and pay him. That printing may come later, but it does not count as part of my election expenses. That is one of the big holes in the federal act. The money is paid and spent before the writ is issued. I do not know if you are aware of that. I guess you'll be taking off on this.

Mr. Nayman: Any expenditures in relation to the campaign.

Mr. Rotenberg: During the writ period.

Mr. Nayman: No. Even if you have some inventory left over from the last campaign. It is any expenses.

Mr. Rotenberg: In the federal?

Mr. Nayman: Yes.

Mr. Breaugh: I am just letting David talk a little bit here. There is a noose hanging over the tree and I want him to--

Mr. Rotenberg: It has been interpreted by me, and confirmed by members of another party that is neither yours nor mine, that there is some loophole in the federal Elections Act. Be that as it may, the main point I want to make is that we have such an accent on dollars and the amount of dollars spent but there is no discussion at all on the amount of man-hours spent.

Jim, you know and I know as candidates that a person will donate time and I can spend his time. That is far more important to me and of far more value to me than a person who donates his dollars and I can spend his dollars.

You are anticipating a question. Do you want to comment on paid time? That is only part of what I said. I would like to hear your comments on that and then I will proceed.

Mr. Nayman: On paid time, under the federal law, if anybody donates time and is paid for it by anyone, it is considered a campaign expense.

Mr. Rotenberg: In the provincial act?

Mr. Nayman: No.

Mr. Rotenberg: Do you feel it should be in the provincial act that if anybody is donating time and is paid for it by someone else, that should be an expense?

Mr. Nayman: May I also refer you to Bill 119, which was

just passed by the Legislature? That act does take that very fact, effective to municipalities and municipal politicians, so it is taken in there.

Mr. Rotenberg: This is one of the questions I was going to ask you later, but in the famous case of Richard Nixon, who ran for President, a leading executive of a major soft drink company was donated to the Nixon campaign and he was paid by his company and there was quite a fuss about it.

If that happens and one of the major corporations donates an executive to somebody's campaign for six weeks--and he is still on the payroll and he is working full-time on that campaign--should that be considered a contribution or an expense?

Mr. Nayman: Right now it is not in the act; so that cannot be done. But whether it should or it should not--

Mr. Rotenberg: That is one of the questions I had for you later, whether in your opinion it should be considered to be a donation or an expense. That is only part of the point I wish to make. Many of the people who are "volunteers" in a campaign are working during the day and are paid by someone else, but the majority of campaign workers are people who come after hours and donate their time free and are not paid elsewhere.

I give this simple analogy which I gave to Liberals this morning. If I have a subdivision in my riding and I want to drop 200 pieces of literature, if it takes a campaign worker six hours to do it, in rough figures, some of his time will be worth \$10 an hour but nobody is paying for it, he is donating to me what could be \$60 worth of time if I had to pay a delivery service for someone to go and drop that literature to every house in the subdivision. Yet he voluntarily donates his time. It is not a contribution and not an expense.

But if the same supporter of mine, or Jim's or any party, instead of donating that 10 hours of time which is not a donation for election expense purposes, gives me a cheque for \$60 and I go and pay the postman \$60 for 200 pieces of mail at 30 cents a stamp, that is a donation and that is an expense. The point I am trying to make is, in this whole problem of limiting campaign expenditures, which is really the fairness, as you say, of the campaign, the result to me as a candidate is better if my worker goes out and spends the time personally delivering that literature than his donating the cash and my paying the postman for doing exactly the same job.

Yet in your whole scenario, the money for stamps is part of the expenditure which should be limited, but the volunteer time of the worker who is, in effect, doing the same job in this analogy should not be limited. I see some unfairness in that.

Mr. Nayman: First of all, every candidate has the right to appeal to as many people as he can to get some work out of them. The fairness is any candidate can appeal and it is fair on every level.

Mr. Rotenberg: My point is that he should be able to appeal to the same number of people for dollars as for hours.

Mr. Nayman: No. There are certain people the candidate pays, so that is considered to be an expense.

Mr. Rotenberg: Let us deal with the other end of it. I am saying I am appealing to all those people out there to donate me X hours of their time to work in my campaign, which you say can be unlimited.

3:10 p.m.

Mr. Nayman: Yes.

Mr. Rotenberg: By the same analogy, I should be able to appeal to that same number of people to donate to me X dollars of their money, which also should be unlimited.

Mr. Nayman: No.

Mr. Chairman: Without being considered expenditures?

Mr. Rotenberg: No, donation as expenditure. I am dealing with your point of putting a limitation.

Mr. Nayman: Yes. But just to the point: Everyone can do the same job in a given amount of time, but not everyone has the same ability to provide money to a campaign. Some people are richer than others, but if you spend an hour or two of your time delivering mail, everyone can do it no matter how rich or how poor they are.

Mr. J. M. Johnson: Some people have more access to free labour.

Mr. Rotenberg: The point is, we have put on a limitation. No one can give more than \$500 to a campaign, which seems to be an acceptable limit all the way around. So really, what I am saying to you is, if I can go out and get as many workers as I want to give me unlimited time, I should be able to go out and get as many \$500 donations as I want to run my campaign.

Mr. Nayman: That is right; that is under the act.

Mr. Rotenberg: Yes. You agree with that?

Mr. Nayman: Yes.

Mr. Rotenberg: When you turn around to the other side of the thing, having received as many \$500 bills as I can get on one side, and having received just as many people donating their time as I can get, I should be able to freely spend all the labour I can get within the act, which is unlimited, and, equally, I should be able to freely spend all the \$500 bills I can get within the act, which are unlimited.

Mr. Nayman: No. Again this is different. You have a certain candidate's ability to raise large amounts of money, even

with the \$500 limitation on each donation, more than other candidates. That is where all the unfairness lies.

To be able to get people's time, every candidate can appeal to as many people as he wants. It does not depend on whether that person is rich or not, he or she gives the time. But when it comes to money, there is an inequality in the amount of amount of contributions from individuals.

Our contributions in this party, and you can see it from all the election returns we file, are fairly small per person, as compared to those contributions to the Conservative Party. So what we are saying is that there should be a limitation on the contribution, but there should be a limitation on the expenditures as well. You can go out and raise \$50,000, \$60,000 or \$100,000. Your ability to do so may depend on the people that you know can contribute an average of \$500 apiece while the people I know can only contribute \$50 apiece, and that may be the same number of people.

Mr. Rotenberg: Yet the people you know may be able to contribute 50 hours of time, and those I know may be able to contribute only five hours of time. You may have access, through your unions, or whatever, to more people to give more time, and that may be an unfair situation.

Mr. Nayman: No.

Mr. Charlton: Isn't that what you want, participatory democracy?

Mr. Rotenberg: Of course you do. But the point I am trying to make is that if you are having unlimited donations of time, which I agree with, and you are having limited donations of money, which I also agree with--maybe \$500 is too much in your scenario--once you allow the person to collect all the workers he wants and all the \$500 bills he wants, on which you seem to agree with me, it seems to me a little unfair to say, "I can spend all the donated time I've got, but I can't spend all the donated money I've got."

If you agree, and you seem to, that it is fair for me as a candid- ate--or Jim as a candidate, or anyone as a candidate--to be able to go out and get as many \$500 bills as he can, it seems a little strange to turn around and say, "Yes, you can collect all you want, but you cannot spend it."

I find some inequality in not allowing a person to spend all the legal donations he gets, whether it be in time or in kind or in money or whatever. Some candidates, from whatever party, have more ability to raise money, for whatever reason; some candidates from whatever party have more ability to raise workers, for whatever reason.

It is a philosophical point. We are not going to solve the problem--

Mr. Nayman: No.

Mr. Rotenberg: You and I disagree philosophically on that

basis, that you say there should be no limit on collection of the number of donations given, but have a limit on expenditures. I say you should be able to spend everything you collect legally.

Mr. Nayman: Okay. Well, on the other point: I do not think we shall arrive at any conclusions here. What I am trying to say is, it is fair for every candidate to go out and appeal to as many people as he wants to work for him. Every candidate can do it, and there is no limitation on the amount of time any one person may spend.

However, the limitation on the contribution is because of the inequality of different classes of people, or different people, or different classes to which the candidate appeals, as to how much they can give; and in order to bring it to some fairness, this act was made so that the limit is \$500.

The same idea applies to the expenditure side. If you want to be fair, and you want to have people run--not necessarily people who can afford to run or who have a lot of friends who can give them thousands of dollars, then you must put some limits on the expenditures. Really, from that point of view, I think the best way would be a limit on expenses and on contributions. But for a limitation of expenses we only have the federal act to look at, and that works well.

Mr. Rotenberg: You see, I disagree. I have a very basic philosophical difference with you on this basis: that you or Jim, as the candidate for your party, or the candidate in my riding from your party, have the free and democratic right to go for money to all the same people who support me as might support you, because my contributions and contributors are public, and I have the same right to go to all the people that you go to.

What you are saying, in effect, though it did not come out this way, is, for whatever reason, different people support your party than do my party or the Liberal Party, which is quite fair; but if you have a set of rules, then under those rules you say party A has more difficulty in raising money than party B, then you ought to change the rules. But in a free and democratic society each party, and each candidate from each riding in each party, has exactly the same right to go to exactly the same people to ask for exactly the same amount of money.

If by an accident of political philosophy or whatever, some of the people who support you for whatever reason do not want to give as much money, or not as much as the people who support me, why should I or my contributors have to suffer when you are in effect saying to the people who want to contribute to my campaign, "Your money can't be spent; but the money of the people who contributed to some other campaign can be spent," because more people want to contribute to, say, someone else's campaign than to one of your campaigns?

Mr. Breaugh: Are you arguing that there should not be any limit at all, that if someone came into your riding next time around and happened to have \$500,000 and ran against you, you would not protest for a moment that he had bought that election; that he was

taking unfair advantage of his monetary position? Are you that pure about this?

Mr. Rotenberg: Yes. What I am saying is--and remember, the candidate himself is limited to his \$500, as is his spouse and so on. If the guy comes in to run against me--and he could be a New Democratic candidate--and if he can find 1,000 people who are each going to give him \$500 to beat me--

Mr. Breaugh: You would not protest about that?

Mr. Rotenberg: I would be very complimented at the fact that there were that many people who would spend \$500 to try to beat me. That is pretty strong. Yes, if he can raise \$500,000, as I said this morning--

Mr. Breaugh: I would bet \$1.95 that on day two you would be on the streets screaming about someone trying to buy off the electorate.

Mr. Rotenberg: I might scream about it, but I think it is perfectly fair and legitimate. I am one of the few, as I said this morning. The Liberal candidate in my riding spent more than I did. It did not help her; I still beat her. As I said, far more important than the money I can get are the workers I can get .

If I can just go on to an entirely different topic for one minute. The matter came up this morning about the municipal election campaigns. Someone used the words "laundering of money through a provincial party for a municipal campaign." We had a discussion, and I checked. There is quite a rigid set of rules on how money can be going from a provincial association to a municipal campaign.

There seemed to be a feeling from the Liberals with us this morning--I don't want to misquote--that they would be happier if money collected for provincial parties under the provincial act was confined to provincial activities. I am wondering if you or your party has a view as to whether money collected legally under this act for provincial parties should be passed on to a municipal candidate who happens to share the same party philosophy. Do you have a position on that?

Mr. Murray: No, we do not.

Mr. Rotenberg: I would be interested. My understanding is that, while it is done from time to time--

Interjections.

Mr. Rotenberg: Do riding associations in your party do that sort of thing?

Mr. Murray: There have been such reports.

Mr. Rotenberg: But do you not have a position? It seemed to arise out of this morning's discussion, there may have been some feeling that that practice maybe should be stopped--

Mr. Mancini: Do not blame us now.

Mr. Rotenberg: Do you think your party might at some future date be interested in taking a position on that problem?

Interjection: Before November.

3:20 p.m.

Mr. Murray: We will be reviewing that in our ongoing discussions.

Mr. Rotenberg: The way you have answered the last two questions makes me wonder when you will be running for office. That is all for now, Mr. Chairman, thank you.

Mr. Treleaven: The logic, Mr. Nayman, leads me to think, since you want to set up rules as to the use of money as compared with the use of labour in an election campaign--labour meaning time, everyone's time--you must feel that money is more important than people's time, that money is more important than people in an election campaign. Is that correct?

Mr. Nayman: No, I did not say that.

Mr. Treleaven: Is that not where I am led with your logic?

Mr. Nayman: No, I am saying the fairness of raising money as against the fairness of attracting people to work for you, there is a difference between the two. Every candidate can attract people to work for him on the same equal basis.

Mr. Treleaven: No. Sir, why do you say every candidate can attract people? Very often candidates can attract money much easier than people to work for them. Many people have more money than time. Many other people have more time than money. Therefore, there are many candidates who can collect money easier than people. You are making a basic assumption that everybody can gather as many people and hours of volunteer time as possible. Where did you possibly get that?

Mr. Nayman: What I am saying is that every candidate is on the same basis. They can go after whatever people they want, whereas when they go after money, after people for money, there is an inequality between the people we can get money from and the people the Conservative Party can get money from. That is all I am saying.

Mr. Treleaven: Maybe by your own self-imposed rules, but in my riding, the candidate of your party and the Libertarian and the Liberal who also ran have exactly the same capabilities of persuasion as I have. If they cannot build an organization of people and gather the time, then that is a human fault. If they cannot gather the finances it is a human failing. But to bring into fairness this idea that you are certainly feeling downtrodden and trying to put over to me you are downtrodden and that you do not have this equal chance and your candidates do not have the equal chance somehow to gather the human resources and the money, now, how

do you get that unless it is self-imposed? It is not imposed by any laws in this country.

Mr. Breaugh: I think that maybe to be fair, the current Election Finances Reform Act recognizes that there ought to be limits on amounts that you can receive from an individual. You have accepted that, your government has accepted that. What has been proposed this morning and again this afternoon is that we ought to do some refining to the process, as the federal act does, to put a simple cap on expenditures.

There would be a variety of ways of doing that, but I find that there is some consensus about that in all three political parties. It is difficult when you look over the list of actual expenditures from the last campaign to explain why Jack Stokes, for example, can win by spending \$6,000 and it takes Larry Grossman \$90,000 to do the same thing. Somewhere in there I do not think it is difficult to agree upon some kind of a cap on the amount of expenditures.

Mr. Treleaven: What I am discussing is the difference between money and human expenditure, and somehow some people have less chance of getting others to work for them. That is a human, personal thing.

Mr. Breaugh: I think for much the same reason--

[Failure of sound system]

Mr. Breaugh: --exact same philosophical reasons, it could make some sense to put a cap on the amount of expenditures. We did it federally. We have all worked under that particular act. It does not appear to me, having run campaigns that way, that that causes a big problem. All it does is make sure that all participants are playing by the same set of rules. I could see where we might argue about the amount that the cap ought to be, but I do not think there should be a big problem over the idea or the concept of some limit of expenditures.

Mr. Rotenberg: The cap should be what Larry Grossman spent in the last election.

Mr. Charlton: Let us put another context on the argument so that perhaps David and Dick will understand the argument a little more clearly.

Mr. Treleaven: We are being led down the money path here.

Mr. Charlton: Yes, Dick, we are being led down the money path--

Mr. Treleaven: And there is more to an election than money.

Mr. Chairman: I just want to remind you that we are dealing with the Election Finances Reform Act.

Mr. Breaugh: That is maybe why we are talking about money.

Mr. Chairman: It is all right to draw an analogy, as you and Dave have been doing, and I think you have an answer to that question. But we have to talk. Basically this is the crux of this whole legislation.

Mr. Charlton: Just a few moments ago, we went through a discussion of the advantages that the governing party has and it is interesting to note--and I say this to the Conservative members of this committee--that their colleagues at the federal level from the position of opposition where they found themselves at a disadvantage in terms of their ability to attract funds for campaigning, took exactly the opposite position to what they are taking here, where they are the government and where they relish the advantages of raising funds from the position of government. Your colleagues at the federal level argued for and supported caps on election spending, and you need to sit down and seriously talk to your colleagues in Ottawa about the disadvantages that exist when you are not in power.

Mr. Treleaven: Just one point: As they say, the witness did introduce the question of time and time expenditure into evidence. I quite agree with you that we are dealing with the expenses act. I would agree simply with Mr. Rotenberg saying there certainly is a non sequitur here and I will leave it to Mr. Breaugh, but Mr. Breaugh will not convince me that money and time cannot be equated.

Mr. Murray: I have a comment on the discussion. It would seem that in terms of using human labour or time, it is patently obvious that volunteer time is substitutable for paid labour to a large extent. The kinds of limitations we are talking about would not interfere, in my opinion, with that kind of substitution.

However, there are several ways, in this day and age, of getting our message to the public. One of them is carrying stuff around and talking to people and the other thing is coming through that tube hour after hour, night after night during the election period. You cannot do that with volunteer labour and that is a significant part of the political process and that takes dollars. That is a very important aspect of the limitations that we are talking about.

If there are no more questions, I would simply sum up.

Mr. Chairman: The only other point I made this morning was that one of the concerns, particularly in the last election, in spite of the amount of money that was spent overall, is that the actual percentage of voters was quite low. I think it was something under 60 per cent, which seems to be low when you have an election after four years in a province such as Ontario, when there are bound to be some issues.

Would you feel that most of the expenditure by the political parties for advertising in various forms helps to get out the vote to a certain extent? Do you think the more references, either on radio or television or in the media, either by way of advertising or otherwise, to the election, to the election date, to the issue, certainly must develop more interest by individual in the province

and when election day comes around, encourage people to vote?

Mr. Murray: The decreasing participation at the polls and otherwise is a concern to all of us.

Mr. Chairman: I am just wondering whether, if you limit expenditures, that would have a detrimental effect on curing that problem.

Mr. Murray: In terms of the evidence over the last 15 years, as expenditures on advertising have risen, participation has, in fact, declined. The additional money spent by all the parties and by the election office in terms of the date and the proclamation of things has not had that effect.

3:30 p.m.

Mr. Chairman: The only thing is, I think you will agree, that the cost of running an election, the cost of television advertising, the cost particularly of newspaper advertising has gone up substantially and that may be reflected in those final figures. It is just a concern.

The municipal level, for example, where you are getting 30 and 35 per cent of the electorate out after maybe two or three years since there has been an election is another great concern. Municipal candidates do not advertise that much, although the government at certain levels can encourage people to vote because it is nonpartisan from a party point of view.

Mr. J. M. Johnson: Can I just ask one question pertaining to municipal elections? Since we have one coming up shortly I think that maybe I could throw out some of my concerns. The party you represent, you propose to be interested in that amount of fairness. What fairness is there to an independent candidate who belongs to no party running against an NDP-supported candidate?

Mr. Breaugh: As opposed to a Tory-supported candidate?

Mr. J. M. Johnson: I am saying if they do not belong to any party.

Mr. Rotenberg: You are talking about municipal elections?

Mr. J. M. Johnson: Yes, municipal elections.

Mr. Murray: We have seen that independents run both provincially and federally as well as municipally.

Mr. J. M. Johnson: And how many of them win?

Mr. Murray: They do from time to time.

Mr. J. M. Johnson: But you are entering into another political arena when we get into municipal elections. Maybe in the cities it has happened for some time but certainly in the smaller communities, rural Ontario, it is not an element up to this time. But I would predict that in a very short time you people will have

contributed to another phase in elections. Independent candidates will become a thing of the past. There will have to be party politics at municipal levels as well and then you are into the expenses that you are concerned about in the provincial and federal field.

Mr. Charlton: How many New Democrats are elected in rural Ontario at the municipal level?

Mr. Murray: We are of the opinion that there have, for the most part, been party politics at the municipal level for some time and that we have not been an active participant in that process. We find it very reasonable for voters at the door to ask any and all candidates whether they have affiliation to a party or whether they support particular parties. We find that a valid question to ask of a person. If a person wants to answer, "I am an independent," that is fine. We think that is a relevant part of municipal politics.

Mr. J. M. Johnson: When you were talking about municipal politics, are you talking about Metro or the whole province?

Mr. Murray: The whole province.

Mr. J. M. Johnson: I do not agree with you that it is a good element to introduce into municipal affairs. I think that for many years it ran quite successfully without party politics and I cannot see that it is an advantage. If you pretend to be so concerned about the expenditure of dollars and time in elections, I am just making the proposal, the suggestion now, that you are contributing towards something that in the future will cost us a lot more than it has in the past.

Mr. Rotenberg: We talked before but I am not sure if I got a total answer from you or not. If I did, I apologize. We talked about what I call the loaned executive, someone who is paid by his company, comes to work in a campaign and not charged to the campaign. I think you indicated at the federal level that is an expense and in the new Municipal Act it is an expense and in the provincial act it is not covered.

Would you recommend that the provincial act should be changed so that when a person is being paid by someone else to come and work in a campaign, it should be considered to be a donation and an expense? Do you think the provincial act should become parallel to the federal and the municipal?

Mr. Murray: I think we can live with either. I do not think we have a firm, strong--

Mr. Breaugh: Every election I have had--you will pardon me for saying so--the local Progressive Conservative campaign has had on staff, loaned usually from an insurance company, people who write speeches for them and do research. It does not seem to be a major problem as yet and I would suspect that it is not going to make a great deal of difference either way if you wrote into this act something parallel to the federal act about providing services. It seems to me would be a little more fair, but I do not think it is a big problem as yet.

Mr. Rotenberg: What is the difference between the person who may work for the insurance company and comes into the office at five o'clock as a volunteer, and the person who is working for a campaign in hours when someone else is paying him for those hours of work? Do you understand the difference?

Mr. Breaugh: I do, and I do not believe it is yet a big deal. It does happen. It happened against me but I do not think it is a major factor.

Mr. Charlton: It is not a major concern for us but, as Jack said, we can live with it either way.

Mr. Murray: We have dealt with this internally, say, setting limits for our own leadership campaign and the debate internally was, if you count people, paid full-time staff as contributions, then adjust the limitations to allow that.

Mr. Rotenberg: --party staff. Some union executives might come to work for a campaign.

Mr. Murray: As a matter of fact, we did include such labour and counted it, but adjusted the limitation.

Mr. Rotenberg: What I am saying is, do you think that should be included in the provincial act?

Mr. Murray: We can live with that. It is not something to get too excited about.

Mr. Breaugh: I have a couple of things I would like to ask. The Liberal Party this morning was suggesting a limit. I think it was 90 cents per voter up to 25,000 and then 50 cents after that. Is that the kind of formula you would be thinking about as well, something like that?

Mr. Murray: We do not have a formula to propose, but yes.

Mr. Breaugh: Are you reasonably arbitrary on whether it is a straight financial cap or a formula or do you have any strong feelings either way in terms of determining those limits?

Mr. Murray: I think it should have some relationship to the actual cost of living because of the kind of problems we were into with the federal. The federal became restrictive for a time and it is now quite generous. Perhaps there could be some sort of index to whatever cap or formula is agreed to. Perhaps it could be reviewed before or after each election.

Mr. Nayman: This act was enacted in 1975, and to date, and this is 1982, no amounts in there have been changed; there has been no amendment to the act. If you are thinking about a limitation on expenses, you should have it indexed to something. Otherwise you will find, especially in view of inflation and the way it is, that after four or five years your expenditure limits have shrunk to practically nothing.

Mr. Rotenberg: Would you agree that \$500--

Mr. Nayman: Every amount in the act should be indexed. There is no question in my mind, because now we find that maybe \$500 does not buy in 1982--and certainly by the time the act will be changed it will be 1985--what it bought in 1975.

Mr. Rotenberg: The same with the \$10 cash limitation--

Mr. Nayman: That is correct.

Mr. Rotenberg: This is a fair question. Would your party support some change in those limits--

Mr. Nayman: Yes.

Mr. Breagh: Jack, would you be happy with a concept whereby if you are talking about limits you would try to key them on something where we could get agreement? For example, in this act there is an agreement or a consensus around the number of days in which advertising can occur.

What if, in proposing limits, a move was made to key on that one point of advertising and a consensus was reached that we will limit not only the number of days in which advertising can occur, but the amounts of money which can be spent on advertising, but that was the end of your limitation, that there were no limits imposed on other areas?

Mr. Murray: Or you could go to hours of air time which then would vary.

Mr. Breagh: So a formula like that, perhaps adjusted by the commission prior to an election being called, is the kind of thing that you would like to have considered.

Mr. Murray: We have not spent any time working on formulas. We simply (inaudible) as an example of the kind of formula that we would hope could be generated.

Mr. Breagh: Just a couple of other areas I would like to pursue with you a little bit: The proposal for a checkoff never really got off the ground. Does anyone have any reason, because there appeared to be consensus that that was a rational thing to do. It just never happened. Does anyone know why?

Mr. Murray: It is my understanding that the checkoff was proposed and accepted by all parties in Ontario and accepted by the government of the day, and that when that was put to Revenue Canada, they said technically they could not do it. It is obvious, because of the householder tax credit and some of the other tax credits, that they can do that kind of counting now because they do it. It would seem that that impediment, which is the only impediment to the checkoff I have ever heard, does not exist today and we could implement such a checkoff.

Mr. Mancini: What kind of checkoff are you talking about?

Mr. Murray: The checkoff that was originally proposed--do you want to explain?

Mr. Nayman: Yes. The Camp commission proposed a checkoff. Every voter in Ontario who was paying provincial income tax would be able to check off a box of his choosing and for every check mark the party would receive \$2. That is the checkoff we are talking about. Apparently it was not done, from what I understand, because Revenue Canada could not do it administratively.

Mr. Rotenberg: That's \$2 from the government. I would not have to pay \$2 more on my income tax.

Mr. Nayman: No.

Mr. Rotenberg: I just tick a box and the government gives the NDP \$2.

Mr. Nayman: Or the Conservatives.

Mr. Rotenberg: For \$2 I will give it to you.

Mr. Murray: It is tax.

Mr. Rotenberg: It is not tax.

Mr. Murray: It is a tax rebate.

Mr. Rotenberg: It is not tax. It is a refund of tax.

Mr. Murray: It is a refund of tax. You are redirecting tax in the same way that the tax credit works. You redirect some of your tax paid to the party of your choice.

Mr. Rotenberg: It is really using the income tax form as a way of soliciting party funds at \$2 a shot.

Mr. Murray: Let's say \$5.

Mr. Breaugh: What I am interested in is how, after the Camp commission made the recommendation and everyone seemed to agree to it, the thing just kind of disappeared and there has been, to my knowledge, not much follow-up on it.

Mr. Rotenberg: The great computer in the sky in Ottawa said it could not handle it.

Mr. Breaugh: I have a couple of other small points. You mentioned, and I know from my experience, a little bit of difficulty with the cash donations being \$10. I know we are forever directing people to get money orders. If they give us \$10 and the money order costs 75 cents, it seems a little out of proportion. Is that a big deal, aside from the obvious nuisance problem involved in there?

Mr. Murray: It is an extreme nuisance problem. We find that cash limitation very constricting. We would think \$25 cash membership and \$25 cash for other donations, so you would have, say, \$50 cash a year, half of it being a membership fee. We probably would not oppose \$50. It is not reasonable that it remain at \$10.

Mr. Rotenberg: Could I ask what the philosophy behind the limitation on cash is?

Mr. Murray: It is my understanding that provides the auditors with a way of controlling contributions.

Mr. Charlton: Do the auditors ever look at the actual cheques or money orders?

Mr. Murray: Yes.

Mr. Nayman: Excuse me, we do not see the actual cheques. How I verify that is very simple. The deposit slip lists either cash on the one hand or cheques on the other hand, so I can easily verify that the individual item above \$10 is by way of cheque rather than cash.

Mr. Rotenberg: I had it in my simple mind that if you collected \$5, \$10 or even \$100 in cash from someone, as long as you gave him a receipt for it and recorded his name, what is the difference whether it comes in cash or cheque?

Mr. Nayman: It makes a difference in this respect. I could collect \$500 cash from one individual and make out 10 receipts.

Mr. Rotenberg: You mean 10 receipts to 10 different people?

Mr. Nayman: Yes.

Mr. Rotenberg: But I can give you a \$500 donation by cheque and say, "I want a receipt to 10 different people because they all contributed."

Mr. Nayman: No, because on the deposit slip I see one item of \$500 and then I see 10 receipts, and then I ask questions.

Mr. Rotenberg: If, say, a partnership gives you a cheque and says, "This is a cheque from these seven partners; each one gets a receipt for a seventh of it," is that not allowed?

Mr. Nayman: Yes, that is allowed.

Mr. Rotenberg: So I can't see the problem. If you have cash of \$200 and they say, "This is from four different partners of this firm; give us four receipts for \$50," what is wrong with it? I cannot understand why there is a problem with cash.

Mr. Charlton: I don't see any problem, either. You--

Mr. Rotenberg: It's not your act, I know. The philosophy is that there is something wrong with cash. As long as the reason for cheques is to keep proper records, I can understand that, but for you, as the auditor, or the CFO of each riding association, if it is mandatory to account for all cash, I cannot see the problem with cash.

Mr. Charlton: On the other side of that same question, you are suggesting that if somebody was to take \$500 and give \$500

because it is not identifiable, and issue 10 different receipts for \$50 apiece, that is illegal. If somebody was prepared to do something illegal, then he would just take the \$500 and give each of the 10 individuals \$50 cash and get a cheque from them for the \$50. It accomplishes the same thing. They could still do the illegal act, if they were prepared to break the law. The cash restriction just places on the riding associations and the volunteers who work in the riding associations a pain in the neck.

Mr. Rotenberg: I had a situation in my riding that my campaign manager drew to my attention. Somebody gave my fund-raiser \$50 in cash and it went through the books. The commission threw it back and we had to give the man his \$50 back in cash and get a cheque for \$50 from the same man. That's the letter of the law. I cannot see a valid objection as long as the money is recorded as coming from Mr. Jones. What is the difference if it comes as \$50 in cash or in the form of a cheque?

Mr. Chairman: You have to have the signature of the donor, either on a cheque or money order. A donor does not put his signature on a receipt.

Mr. Rotenberg: No, of course not. Why do you need the signature of the donor? Are you afraid that somebody is going to give him or me \$50 in cash and it is really from somebody else?

Mr. Chairman: Sure.

Mr. Rotenberg: Why? They could do it anyway.

Mr. Chairman: Or give you \$500 and, as Brian said, you get 10 receipts.

Mr. Rotenberg: I could break it up into 10 \$50 cheques the same way.

Mr. Chairman: Signed by the same person?

Mr. Breaugh: If a person, for whatever reason, gives you an anonymous small amount of \$10, to ask him to go and get a money order which costs him 75 cents, or write a cheque costing him 40 or 50 cents, depending on where he does it, does not seem to make a whole lot of sense. I know, for me, that is a bit of a pain in the rear end. I understand the premise behind it, which is laudable and supportable and all that. I am just looking for something a little more pragmatic that says, "For \$20 I will write you a cheque, for \$25 I will write you a cheque, that is worth while; but for lesser amounts than that it is not worth bothering with."

It is a deterrent because there are lots of people who are going to give you \$10 but when you explain that they have to go and get a money order or go home and get their cheque book and write a cheque, they may say at that point, "Forget it."

Mr. Rotenberg: Let me ask another question, because I am not too clear. Do you have to give a receipt for \$10 in cash or \$7 in cash? Do you have to give a receipt or does it just go in the cash received?

Mr. Nayman: You give out a receipt for every contribution.

Mr. Rotenberg: Even if it is \$1 in cash?

Mr. Nayman: That is correct.

Mr. Rotenberg: Let me ask you this: It may happen in one of your meetings or it may happen in one of my meetings, at a nomination meeting, somebody passes a hat and you get a bunch of \$5 and \$10 bills.

Mr. Nayman: That is a different thing, that is collection at meetings, and nobody gets a receipt. By a receipt, I mean an official receipt they can use for tax purposes.

Mr. Rotenberg: Collection is allowed, but if I go to solicit money or my fund-raiser goes to solicit money and somebody gives him a \$5 bill at his door, he gets a receipt for that \$5 bill?

Mr. Nayman: Correct, and he can use it for tax purposes.

Mr. Rotenberg: So the \$5 bill in cash is recorded even though he does not sign a cheque. I give a receipt to John Doe at such an address for \$5 in cash. Somebody is going to have to convince me why, if he gives me a \$5 bill or a \$100 bill, and the collector gives him the same receipt he gives to the person with the \$100 bill. I can't see any reason why that person with \$5 can give a bill and for \$100 he has to give a cheque. I really would be very much in favour of raising that cash limitation. I have to be convinced, because it doesn't make sense to me. I happen to agree with you on that point.

Mr. Watson: Do you agree with the fact that it has to be a cheque? Do you agree with the present system, that it has to be a cheque or money order for donations over \$10?

Mr. Nayman: Personally, yes. If you want to increase the limit, that is okay with me too, but there should be a limit at which a person has to give a cheque, something that can be tied up to that person. If I come in with \$500 in cash and give it to you, or \$1,000, and make out two receipts--

Mr. Watson: But if you are going to give an official receipt to that person, surely the purpose of this is to leave a trail so that an auditor could--

Mr. Nayman: But the cheque is a trail too.

Mr. Watson: But if the official receipt is there for a certain person, can't you check that?

Mr. Nayman: No, that is not enough. It is right in the act, I think--I don't know what section--that it must be money out of his own funds. He cannot give somebody else's money. If you want to verify that somebody has given you money--I am not a lawyer, I am sorry Jim is not here--in law it seems to me a cheque, endorsed by the person to whom it is made out, is verification that the money has been given by that person out of his own funds.

Mr. Rotenberg: Not necessarily. If someone wanted to get around this, he could. Mr. A. could take \$1,500 in \$100 bills and give two of his friends \$500. They could put it in their accounts and those two friends could issue \$500 cheques. If someone wants to get around the act, he can get around it with cheques just as easily as with cash. Would that not be so?

3:50 p.m.

Mr. Nayman: Oh, yes.

Mr. Murray: Perhaps that is why the commission should do its own prosecution.

Mr. Watson: Do you have to sign? If you buy a money order, do you have to sign when you buy it?

Mr. Rotenberg: A standard money order, yes.

Mr. Murray: Yes.

Mr. Watson: That then becomes--

Mr. Murray: The equivalent of a cheque.

Mr. Watson: Can you not send a money order in someone else's name?

Mr. Nayman: Oh, yes, you could do any number of things. As this gentleman says, you can give your friends money and they will make the contribution. There are all kinds of things you can do behind the scenes. But the best proof a contribution has been made to a constituency or a party is a cheque or a money order.

Mr. Rotenberg: As I say, I can see for the \$300, \$400 and \$500 contributions, there is likely some reason for cheques for records. But certainly, \$10 is way out of line.

Mr. Chairman: That should be increased.

Mr. Mancini: You said that a half hour ago.

Mr. Rotenberg: Something in the neighbourhood of \$100 might be a good idea for cash.

Mr. Breaugh: I have one final area I would like to get comments from this group on. I am going to ask the same question tomorrow when the commission is with me. Somebody has to find for me a way to simplify the process. I love visiting you in your office, Bernie, but I ain't making that trip with a cardboard box one more time. I keep getting nice letters from the commission, merely threatening to send one of my constituents to jail, and Mr. Joynt calls me up and explains they really will not do that but they have to inform the Attorney General that we are late again and all that kind of stuff.

Is there not a way we can make this process work, so ordinary lay people who are not accountants and auditors can function? They

are trying, but not succeeding. I expect a lot of riding associations are attempting their level best to conform with the requirements set out by the commission. We all agree those are good things to do, but is there a way we can simplify the process?

Mr. Nayman: Mr. Chairman, the process has been designed to give effect to what is in the act. The act came first and the process evolved from it. From my experience, in the last seven years as the auditor, I do not find any problems with it.

Mr. Breaugh: You do not because you are not bringing the cardboard boxes up.

Mr. Nayman: No.

Mr. Rotenberg: With respect, I do not want to tell you in your party how to run your business, but instead of having Bernie do the audits for 100 riding associations, if you got someone in your own riding association who is part of your campaign who would keep the day-to-day records and would know how to do it and he was the auditor--

Mr. Breaugh: That is the problem. The assumption is, and it may be true for your party, David, that you have lots of people who are accustomed to keeping records of that kind.

Mr. Rotenberg: No.

Mr. Breaugh: I, unfortunately, do not.

Mr. Rotenberg: You should be able to find one in your riding association.

Mr. Breaugh: We are going to hire people.

Mr. Rotenberg: You should have one in your association who has some elements of bookkeeping. Obviously, with all the unions, the United Automobile Workers, there has to be somebody who keeps books for the UAW local who could volunteer--

Mr. Breaugh: We have managed to conform with the requirements of the commission every year so far and I expect we will in future years, as well. But it does seem to be a bit of a hassle and I am wondering if there is not a way that small changes which would not affect the spirit of the act could be made to simplify it somewhat.

Mr. Chairman: Your auditors get paid. You know that.

Mr. Breaugh: Yes, I realize that. I am not worried about Bernie.

Mr. Charlton: It is the riding person who has to keep the records.

Mr. Chairman: We always put the auditor on our executive. Are there any other questions by any of the members? Would any of you gentlemen like to make further comments?

Mr. Murray: Just to sum up, Mr. Chairman. I appreciate the opportunity to come here today and share our concerns with the committee. We have come back to agreeing with a number of the committee members that the limitation on cash contributions should be raised. We would also emphasize the point about direct support to the parties, probably support for media and controls on media during elections, but as well some support for the administrative costs referred to that the parties bear, possibly along the lines of New Brunswick and, I understand, one other province. There is a formula of so much per vote or per voter.

We also strongly propose that the checkoff provision in the original Camp report and in the original request to Ottawa be revived. We find the reasons to support that proposition have not changed, but the circumstances which might allow its implementation have changed. That would be a useful way of assisting the parties and broadening the participation by citizens. We would want to emphasize again that our experience with the administration of the act has been most favourable. We think they have done an excellent job and our relations have been very cordial.

We will be proposing that the redistribution be regularized and that responsibility be assigned in whole or in some shared fashion to the commission because of its structure and its current credibility.

Finally, we would come back to the question of limitation on expenditures during elections and we are strongly of the opinion that the original purpose of this act will not be achieved until such controls are imposed on expenditures, both centrally for media and other expenses, and at the riding level in terms of advertising and other expenditures. Again, we thank you.

Mr. Chairman: Mr. Mancini, do you have a question?

Mr. Mancini: Yes, I am sorry, Mr. Chairman. Just before you go, did we discuss at any length the fact that certain riding associations and central parties give money to local candidates in local elections?

Mr. Chairman: Yes, that was discussed.

Mr. Mancini: We have?

Mr. Breaugh: Maybe I should put on the record that to my knowledge, the last time I checked, there were three out of 125 riding associations doing that.

Mr. Mancini: Which three were they?

Mr. Breaugh: Get your own researcher, Remo. I do not know offhand. There were three Toronto ridings.

Mr. Mancini: Do you know offhand of any ridings--

Interjection.

Mr. Mancini: If this were the case, how would these

particular riding associations deliver that money to the particular candidates?

Interjection.

Mr. Mancini: No, would they have to get permission from the riding association membership?

Mr. Breaugh: Yes.

Mr. Mancini: Would they call a general meeting and all members--

Mr. Breaugh: I cannot speak for anybody else, but to my knowledge, on the few limited occasions when that has happened, it has been done by motion at a membership meeting. It is recorded and reported to the Commission on Election Contributions and Expenses and it does a report on it. There are only three that I am aware of.

Mr. Chairman: Did you want to add to that, Mr. Nayman?

Mr. Nayman: No, it has already been said. Thank you.

Mr. Chairman: Are there any further questions? Thank you very much, Mr. Murray, Mr. Dale and Mr. Nayman for appearing before us and for your submissions and contributions. We appreciate it very much.

Mr. Murray: We will be contributing a written submission when we get it worked out.

Mr. Chairman: Fine, thank you. If members of the committee could just stay for a second. I do not need Hansard.

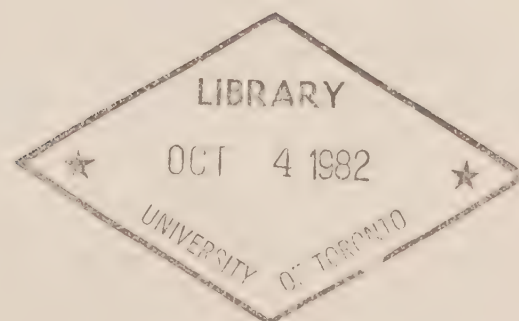
The committee adjourned at 4 p.m.

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

AGENCY REVIEW: COMMISSION ON ELECTION CONTRIBUTIONS AND EXPENCES

THURSDAY, SEPTEMBER 16, 1982

Morning sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breagh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
McLean, A. K. (Simcoe East PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher, Legislative Library

Witnesses:

From the Commission on Election Contributions and Expenses:

Dobson, R. B., Registrar
Guthrie, H. D., Member
Maddaugh, P., Counsel
Scandlan, W. F., Member
Stevenson, A., Legal Advisor
Sullivan, B., Vice-Chairman
Zimmerman, W., Member

From the Office of the Chief Election Officer:

Bailie, W. R., Chief Election Officer

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, September 16, 1982

The committee met at 10:13 a.m. in room 151.

COMMISSION ON ELECTION CONTRIBUTIONS AND EXPENSES
(continued)

The Vice-Chairman: I see a quorum. Mrs. Sullivan, the vice-chairman, will be the leader of the deputation. Perhaps you would take your seat and everyone else who wishes to accompany you will sit at the table. Would you introduce the people with you? Do you have a written brief?

Mrs. Sullivan: No, we do not have a written brief.

The Vice-Chairman: I see you have an opening statement to the committee. We shall have that from you or any of those with you, and then we will be able to ask questions.

Mrs. Sullivan: My name is Barbara Sullivan. I am vice-chairman of the Commission on Election Contributions and Expenses, acting in lieu of having a chairman on this commission.

I would like to introduce to you the people who are in our delegation. To my left is Peter Maddaugh, who is a member of the firm of Tory Tory Deslauriers and Binnington, and that is the counsel to the commission. No jokes about Tory Tory; we have done that five years ago.

To my immediate left is Anna Stevenson, QC, who is the secretary to the commission and our legal adviser.

Mr. Epp: She is with Liberal Liberal.

Mrs. Sullivan: No, Anna is not identified.

Mr. Breaugh: You cannot find the two back to back.

Mrs. Sullivan: To my right is Robert Dobson who is the registrar for the commission.

We think you have had plenty of documentation concerning the activities of the commission. We did not have a meeting to prepare a written brief or presentation to you. However, we do welcome your questions and observations concerning our activities.

I want to mention that we regret the absence of Don Joynt, our executive director. Many of you have met Don before. He had to attend the funeral of his father and so on in Ottawa. I hope that you will join with us in extending sympathy to him.

In terms of what we have to say, there is not a lot because we

are not quite certain what you want to hear and what areas of our activities most concern you.

One of our disappointments from the discussions yesterday was an aside made by Mr. Breaugh that his association was going to be hiring a campaign financial officer. We feel that one of the strengths of the commission is, frankly, the participation of the political party representatives on it; also, the direction in the act which we feel we are really attempting to follow very strongly, that is, to aid and assist associations in complying with the act.

We have on the commission people from the political parties who have served as volunteers in riding associations and at the provincial level. We think they understand, and probably in our decisions if we have faulted in any way it has been from leniency with the volunteers who are doing the work of the CFO.

The commission has directed the staff, and the staff has undertaken to do seminars for CFOs, and to do private training as well, to be in touch with them all the time.

I am really disappointed and I think the other members of the commission will be too if you decide to take that step.

One of the pieces which I think you all have in your material is a consolidation of the recommendations of the commission for amendments to the act. These have been considered over a period of time and nothing has yet been done about them. We would like to urge this committee to urge the government to do something about them. We feel it will make the act more effective to administer and more effective for the riding associations to handle.

With that, we would like to welcome your questions and comments.

The Vice-Chairman: I am wondering, Mrs. Sullivan, do you think it would be in order, even though we have the copy of your recommendations, for you either to summarize them or indicate them, or would you rather just have us question you on the recommendations?

Mrs. Sullivan: We could go through them. That would take more time. In our counsel and our registrar we do have people who can explain the details of each one of the recommendations. If you would like to do that, that would be fine.

I want you to understand that most of our recommendations are process recommendations rather than policy. It was the view of Mr. Wishart when he was chairman that the commission really ought to be making process or administrative recommendations for change, rather than recommendations for policy.

The Vice-Chairman: I think there are two things. First, we should have them so as to have them on our record, and second, without reading through all of them, if you or one of the persons with you could go through them fairly quickly in a summary form so that (a) we have them on the record and (b) the committee would then be more knowledgeable on the matters that you are recommending.

Mrs. Sullivan: Okay. The first amendment. Do you all have a copy?

On the left hand side is the amendment proposed, on the right hand side of the sheet is the commentary. The first amendment is to make a distinction between services which are performed voluntarily by an individual for a party, an association or a candidate, to be done without compensation by his employer or through an arrangement that would exceed the amount of money he would normally be paid for that service for the period of time he would be doing that job. Are there any questions on that?

Peter, would you like to go through some of these other ones?

10:20 a.m.

Mr. Maddaugh: All right. Let us just follow down the page then.

A number of these amendments, as Barbara indicated, really are of a procedural nature and were deficiencies discovered in the process of administering the new act during the first five or six years. Many of these amendments, as has been said, have been tabled by the commission from a very early date after recognizing some of these deficiencies.

The next definition, in order, is a solution to a problem the commission has faced over the years. A number of political parties have made application for registration under the act, then have gone off to seek the 10,000 names and we have never heard of them again. Over the years, I think there have been 14 to 16 applications for names. They have disappeared.

One of the concerns we have had is that in getting into the multiplicity of names we may get into duplication. Someone may apply for a name and another group with a similar name is out there seeking registration. Areas of confusion were about to develop without any guidance in the act. Right now, the act prohibits registration of a name that is similar to an existing registered party. It did not deal with the problem of competing applicants out there with similar names.

What is proposed here is a rather simple solution. When one applies for registration with the commission, that name is given, in effect, a six-month reservation. If one does not return within that time with the necessary petition, that name is free for someone else to perhaps use to petition.

It just meant there was some clarity here; names were not tied up forever. In many cases, with these names of petitioners who went out and were never heard from again, there was no concern that name might suddenly reappear and there would be a conflict. This makes it clear there is a six-month hold period while you collect your petition names, thereafter it is freed up.

Mrs. Sullivan: On that point, I could refer you to page 18 of the seventh annual report, at which point we see the political parties which are registered, the political parties which have

obtained approval of the party name by have not submitted petitions and political parties which have requested commission approval of the party name but the application was rejected.

The Vice-Chairman: If there is nobody interrupting, you can just assume what you are saying makes sense, so just proceed.

Mr. Maddaugh: The next is number 3 on the list of amendments. This is part of a whole series of financial recommendations made in the case of chief financial officers who have retired, or died or are otherwise incompetent, as to how to get up to date financial reports out of the association or the candidates' campaign records.

This particular subsection deals with a case where a party voluntarily deregisters. It is a requirement to make it clear that on the failure to give up to date financials at the time of deregistration, the party or constituency association, the next higher level in the process, is under the obligation to see that is done.

Subsection 2 of number 3 continues that thought with some sanction provisions. The thought is carried on in subsection 3.

The next recommendation is, again, a procedural tie-in with the Election Act and it is just to co-ordinate names there. It is a requirement that a candidate, prior to polling day, shall file an application for registration with the finance commission. A complementary section is envisaged with the Election Act, requiring the candidate's nomination papers to include a declaration he has applied or an undertaking that prior to polling day he will apply for registration under the Election Act so that there is a congruence between the two bodies as to who, in fact, are the registered and the formal candidates out there.

The Vice-Chairman: Can I ask you a question on that? If, in the unlikely event a candidate is nominated and has no contributions or expenses--which sometimes happens in municipal governments, it very seldom happens in our government; an independent could put his name on the ballot and spend no money--would he still be required to register, if he spent no money?

Mr. Maddaugh: Yes.

The Vice-Chairman: And should file, in effect, a nil return.

Mr. Maddaugh: One of the things the commission would want to monitor is that very fact he has spent no money and that that indeed is the case. At the moment, the current requirement is not to file a full return with a lot of zeroes on it, but at least to file an attestation that he has spent no money during his campaign.

The Vice-Chairman: Or collected no money.

Mr. Maddaugh: The next section is simply a recognition of the times. It is a modest recommendation that the \$10 limit on cash be raised to \$25.

The Vice-Chairman: I do not know if you were here yesterday when we had some discussion with the parties.

Mr. Maddaugh: I was, indeed.

The Vice-Chairman: Why \$25? Would some higher number, say \$50, cause you any problems? Acts do not get changed that often. I am wondering if you are hung up on \$25 or would something--

Mr. Maddaugh: I personally am not. Again, I do not know what the commission's feeling might be. The policy is fairly clear in terms of traceability of cash funds, which can be dangerous if not recorded or what have you. Obviously, it is a matter of cutting it off at a reasonable point which allows a certain flexibility, which is desirable, but at the same time protects the principle. It may well be that some sum between \$25 and \$100 is appropriate. I think \$500 is probably inappropriate.

The Vice-Chairman: Thank you.

Mr. Maddaugh: The next amendment, number 6 on your list, deals with section 22 of the act which deals with provision of goods and services.

At present, the act provides that goods and services having a value of less than \$100 are not considered to be a contribution under the act. That was to allow for the flexibility of having the people who gave the odd piece of paper for signs or some sticks for signs, minor things, not having to go through a lot of record keeping and inconvenience.

On the other hand it is recognized that because of the tax advantages a contribution will give you, people who gave such services in kind, as opposed to cash, were deprived of the ability to get a receipt for \$50 worth of sticks or what have you. The amendment is to provide an option, that it may be considered a contribution but it does not have to be.

In other words, we can retain the flexibility of not going through record keeping of that sort of thing that is currently there, but if some contributor would like to have a receipt and would like to have that regarded as a contribution to the party, that flexibility would be provided. That is the thinking behind that "may" proposition now in section 22.

10:30 a.m.

The Vice-Chairman: I have two questions on that point. Firstly, goods and services in some ways could be equated to cash but are not as traceable because there is no signature. If I go down to the local lumber yard and they give me a pile of stakes, how big a pile was it? Then I get an invoice. Do you have any problems as far as verifying donations in kind?

Mr. Maddaugh: We have had very few donations in kind and, hence, very little experience with it. The problems that you described have not, in a practical sense, raised themselves before the commission to date. Certainly the act speaks of problems of fair

market value and getting goods below fair market value and the difference being deemed to be a contribution, and that sort of thing. Initially, when we read those sections we saw those kinds of problems, but in a practical way, those problems have not materialized before the commission, very little contribution in goods and services, in fact, being shown as such.

The Vice-Chairman: Is there any rule of thumb? Again, with the same example of the lumber yard, you get a load of stakes. Must that be at fair market value? If it is all donated to me, is it at the retail level, at wholesale, at his cost?

In other words, the contributor could somewhat inflate the value in order to get a higher receipt. Should he be doing it at his cost or at what he would sell to someone else? Is there any rule on that?

Mr. Maddaugh: Again, I think the act purports to speak to that. It talks about the lowest price being charged for such goods in the marketplace at that time and anything in excess of that, I guess, would be deemed to be a contribution.

The Vice-Chairman: I am not worried about it being deemed; I am worried about what he gives to the candidate for nothing but inflates the value, not that he is giving at a lower value. He might sell this to somebody for \$100 and he might give it to me and give me an invoice for \$150 in order to get a higher receipt.

Mr. Maddaugh: That is right. His contribution should be the difference between zero and that lowest value at which it is being offered in the marketplace.

The Vice-Chairman: If he tries to have an inflated invoice, that would be--

Mr. Maddaugh: That would be improper.

Mr. Watson: Is that not handled now by actual payments being made and then a cash donation if the fellow wants to donate it back to cash?

Mr. Maddaugh: I think that is a common practice.

The Vice-Chairman: An exchange of cheques.

Mr. Watson: That would just simply save bookkeeping.

Mr. Maddaugh: That is right. It also puts a very fixed value on the contribution and saves the valuation problem too.

The Vice-Chairman: There would be no problem from your point of view if, say, I give a lumber yard a cheque for \$100 for the stakes for which he invoiced me and then he gives me back a \$100 contribution. That probably makes it easier for you, does it?

Mr. Maddaugh: That is right, but I suppose there could be problems if that \$100 which I receive as a contribution was used to

purchase stakes which, in fact, were only worth \$25. We could get into a problem there.

Mr. Watson: I do not think this is my point in following up on what Dave said. This is not going to correct the problem that he raises, is it?

Mr. Maddaugh: No indeed, nor is it intended to.

Mr. Watson: The situation he is pointing out is if somebody wanted to do that, they would do it under the present system.

Mr. Maddaugh: Quite right.

Mrs. Sullivan: I think, too, on the practical side there are only certain numbers of goods that would be donated in kind and it would be fairly easy for the commission in going through those reports from every riding in the province to ascertain what the fair market value is of any goods or service that would be provided in an election situation or in a regular situation. We would spot that.

Mr. Watson: The ones that were (inaudible) would be spotted.

Mrs. Sullivan: Pretty easily.

Mr. Maddaugh: The next section, number 7 on the list, deals in the media advertising area. One of the purposes of the amendment is to make it clear that the section applies equally to broadcast advertising and to publication advertising--there is some deficiency in the original wording there--and also to clarify that there is an exemption from this from bona fide news reporting, the six o'clock news interview and that type of thing, as not being part of the political advertising restriction; and, finally, an amendment to tie the section in with the federal legislation governing free-time broadcasts under the Canadian Radio-television and Telecommunications Commission and just tying in their guidelines as to the offering of free-time broadcasts on an equitable basis among the various contestant political parties so that there was a congruency of policy in that area.

The Vice-Chairman: Free time does not cause a donation.

Mr. Maddaugh: That is right--unless you just give it to one party. The obvious point of free time is that you do it equitably and the commission has guidelines on that.

Section 8 deals with the revision to fund-raising function, section 24 of the act, a section which as currently drafted has been a source of some confusion over the years it has been administered.

It is a fairly complicated rule, but as it stands, if a sale of tickets is made to a function and the charge exceeds \$10, then half of it will be considered a contribution and half will be allocated to expenses up to \$50. In other words, if the charge is \$50, \$25 is a contribution and \$25 will be written off against

expenses. But that \$50 then is a cap and anything in excess of \$50 is a contribution.

Even stating it is to see how complicated it is. That section has given difficulty in administration over the years. What was suggested in our amendment was a fairly open-ended approach to it. We simply said that anything up to a maximum of \$25 can be deemed to be applied to expenses. Anything beyond \$25 is a contribution.

In other words, it caught the substance of the original words but was a much simpler thing to administer and allowed people to claim it as a contribution up to \$25, or to allot it to expenses of up to \$25. It gave complete flexibility in that initial range of \$0 to \$25. Beyond \$25, however, we are saying it is getting into the contribution area. You might exempt something up to \$25, but thereafter it is going to be counted as a contribution.

The Vice-Chairman: Andy, did you have a question that?

Mr. Watson: Yes, on that point. I do not quite understand it. Are you suggesting no limitations on what can be given as contributions?

Mr. Maddaugh: No. The general contribution limits are still in effect, of course.

Mr. Watson: Suppose you have a banquet and you charge \$15 for the banquet and the hotel charges you \$15. Are you suggesting by this that that could be a contribution?

Mr. Maddaugh: You would have that option. You could give tax receipts to your contributors for \$15, or you could say, "These are not contributions; these are just going to be allocated to expenses," and not give any receipts at all. Up to \$25, you could have that flexibility.

Mr. Watson: Then why put the \$25 in?

Mr. Maddaugh: Because at some point you do not want to exempt moneys coming in and saying they are not contributions. The feeling is that \$25 probably is a realistic expense charge per person for a fund-raising event.

The Vice-Chairman: Do you have to charge, as expenses, what your expenses are? In other words, if I want a fund-raising dinner and the hotel is charging me \$20 a plate and I am charging \$50 a ticket, must I take the \$20 off for expenses, or could my option--as you have written this--be to deem the whole \$50 to be a contribution? It is of far greater advantage to me if I can sell a ticket and give a \$50 receipt rather than giving a \$30 receipt.

My understanding of the previous act was that I had to take the expenses off and give a receipt only for the donation portion, as in the federal Income Tax Act; that I had to take off the dinner as expenses. But the way you have written this now, my understanding is that I do not have to do it and I could take the whole \$50 ticket and give a receipt for it, which is of great advantage to fund raising.

10:40 p.m.

Mr. Maddaugh: That is correct except it is not \$50, it is \$25, but the point is you do have flexibility. It was not clear under the present act that you did not have that flexibility.

The Vice-Chairman: My understanding of the way you have written the amendment is that, if I charge \$50 a ticket I may charge \$25 to expenses and give a receipt for \$25, but then I may give a receipt for the whole \$50. Is that correct, the way it is now?

Mr. Maddaugh: That you may give a receipt for the whole \$50 as a contribution? Yes.

The Vice-Chairman: Why would anyone not give a receipt for the maximum, because it is much easier to raise money if I can give a receipt for \$50 instead of \$25? Really, what you have done, if you intended to, I would think you are going to find that every dinner now is going to give a receipt for the full amount and will not take anything off for expenses.

Mr. Maddaugh: Our feeling is that is accomplished right now. For example, you can go out and raise funds and give receipts for \$50, and then turn around and use those funds to put on a dinner. That flexibility is there right now. What we are trying to do with the section is put that section into the mainstream of the other sections, namely, anything received can be attributed as a contribution.

Mr. Epp: So right now, if you are going to have some kind of fund-raising function and if your expenses are, let us say, \$15 per person, and you want to raise \$100 per person, you can give them a receipt for \$100 and they can claim 75 per cent as a tax credit and that is all there is to it.

Mr. Maddaugh: That is right.

Mr. Epp: Is there any difference if those expenses exceed \$25, is that what you are getting into?

Mr. Maddaugh: The \$25 is really an exemption to this, that if you do not want to consider it a contribution, up to \$25 can be accepted on that basis, that it is not a contribution.

Mrs. Sullivan: If I can just go back to Mr. Rotenberg's case, he could not understand why some riding associations would prefer not to give tax receipts in certain instances. One of the reasons is that there are limits on contributions and, as a consequence, if you start to reach the limit and want to do two or three more functions, you may not want to have the contribution receipt given to each person.

The Vice-Chairman: If you are reaching the \$500 or \$600 per person.

Mrs. Sullivan: That is right, you are starting to reach towards the limit.

Mr. Watson: I do not have that problem.

The Vice-Chairman: Under the federal Income Tax Act, for charitable dinners--forgetting expense accounts--if I go to the United Appeal or Red Cross or someone who is running a \$100 a plate dinner, that organization cannot give me a tax receipt for \$100. They must, in my understanding of the federal Income Tax Act, deduct the approximate expenses for the dinner. If it is \$25 a plate for the hotel, they can only give me a tax receipt for \$75.

The federal income tax has clamped down. Some organizations now, when they run these dinners, would list \$100 for the donation plus X dollars for the dinner. You almost write two separate cheques because the amount for dinner is not a donation.

It would seem to me that if a candidate or a constituency association is running a fund-raising dinner, X number of dollars is for dinner and X number of dollars is for fund-raising. It just seems to me that you are giving out receipts, in effect, not for donations but for someone's dinner.

I am wondering whether you have taken seriously the other side of the coin, that a constituency association must charge its expenses for the cost of the dinner and can only give receipts for the difference now. It is better for me as a candidate or a fund-raiser to be able to give a receipt for the whole amount. It is much easier to collect a \$100 bill if I give him a \$100 receipt instead of a \$75 receipt, but it seems to me that what you are doing is giving a receipt for a dinner and not for a contribution.

Mr. Maddaugh: In a sense, all contributions fall in that category. You are giving receipts for contributions and they are being used to buy signs, to pay for meals, to promote a candidate. It is just the asset versus the liability side.

The Vice-Chairman: If I appeal for money to buy a sign, that is political activity, but do you deem feeding the people donating an activity? It is different under the federal Income Tax Act.

Mr. Maddaugh: Yes, it is different from the federal Income Tax Act.

Mr. Epp: I can only tell you that the way you are at present interpreting the act I think is much more acceptable to the various associations and that it encourages a lot more fund-raising, rather than trying to deduct the amount from the actual receipt that you give.

Mrs. Sullivan: This is a proposed amendment to the act.

The Vice-Chairman: Does the present act give that flexibility or in the present act must you deduct expenses?

Mr. Maddaugh: No, the present act is quite unclear in its wording and we have interpreted it during the first six years, whatever it has been, as allowing that flexibility.

Mr. Epp: This just clarifies it.

Mr. Maddaugh: Yes.

Mrs. Sullivan: That is right, it makes it very simple. Once again, going back to the volunteer out there, we want to be able to have a farmer understand what to do if he happens to be the CFO as easily as a chartered accountant and this is very clear.

Mr. Epp: If you were to interpret it otherwise, it would be very difficult because, first of all, to what extent do you give people receipts? If you want to sell a ticket for \$50 or \$100 and you do not know your expenses until a month after the event, what happens if it is \$17.98? What do you do, give everybody a tax credit for the amount of \$100 minus \$17.98? It really could develop into a lot of trouble.

I have some other questions associated with the--

The Vice-Chairman: On that last point, I just want to indicate that I think the commission made a conscious decision to take that route, but again I have worked on dinners under the Income Tax Act. You set a fee for dinner, you say you are going to charge \$25 a plate for dinner and then you are going to charge \$100 for the contribution to come to the dinner. You give a receipt for the \$100 and the \$25 is not taxable.

If you go a little over or under, that is acceptable to the federal income tax if you set your fee for dinner and that could be done if you went that route. As long as the commission has made a conscious decision that the cost of the dinner is receiptable, then I say, as a candidate and for my fund-raiser, that is great. I just want to make the difference between that and other fund-raising.

Mrs. Stevenson: We are not dealing with the federal income tax. We are dealing with the provincial tax--

The Vice-Chairman: Yes, I understand that. We should understand that there is a difference. I am not criticizing you for the decision, I just want to make sure that it is a conscious decision and you understand all the ramifications.

Mr. Epp: Just somewhat related to this, because we are talking about amounts of \$100 and so forth, at the present time people who donate money, at the moment \$100 or more, that is registered and that has to be made public. Is that not true?

Mr. Maddaugh: That is correct.

Mr. Epp: One hundred dollars or more and the individual names are recorded and so forth.

Mr. Maddaugh: Yes.

Mr. Epp: There are two things. For instance, if somebody gives \$99 it is not, and it seems to me that people will naturally give \$25, \$50, \$75 or \$99. Why is that not changed to more than \$100 rather than \$100 or more? You almost get them starting to play

games saying, "If I give \$99 my name is not going to become public; if I give \$100 it could become public." It seems to me that what they should have done is make it more than \$100 rather than \$100 or more.

The second question is: since that amount was drawn up about six years ago, and since we have had a considerable amount of inflation, has there been any thought given to increasing that to \$150 or \$200, or whatever amount would seem fair?

The Vice-Chairman: Could the members hold their questions on matters that are not in the suggested amendments? Let us go through the amendments first and then deal with other general questions.

Interjections.

The Vice-Chairman: I have asked the delegation to answer this question because it has been put, but would members hold other questions which are not part of the brief until we finish the brief?

Mr. Dobson: If I may, Mr. Epp, the revelation of donations as displayed on a filed financial statement relates only to contributions in excess of \$100. That is the present law.

Mr. Epp: In excess of \$100?

Mr. Dobson: Yes, \$100.01 and greater than that.

Mr. Epp: I always thought it was \$100 or more.

Mr. Dobson: No. Subsection 35(1) indicates in any year or any campaign period that in the aggregate exceeds \$100, the name and address of the contribution be displayed.

Mr. Epp: Is that the same way as federally?

Mrs. Sullivan: No, the federal act is different.

Mr. Dobson: I believe it is different.

The Vice-Chairman: Our act is always much more sensible than the federal act.

Mr. Watson: I think the impression is out there otherwise.

Mrs. Sullivan: You can spread the good news among your colleagues.

Mr. Dobson: We have attempted in the office at every opportunity when we are reviewing a filed financial statement, be it a candidate's campaign return or indeed an association's return, if we were to observe a number of \$99 receipts, make contact with the chief financial officer and perhaps for the future acquaint him or her with that section, but as time has gone by it does seem that more and more are familiar with it.

There are a lot of \$100 contributions which are not displayed as a matter of openness, if you wish.

10:50 a.m.

Mr. Lane: (Inaudible) the reason for it?

Mr. Dobson: It is in keeping with the act, Mr. Lane.

Mr. Lane: We have always done the other. If a guy would give us \$100, we always put the name on it.

Mr. Dobson: It is not necessary by the statute.

Mr. Lane: But if he gives us \$100.25--

Mr. Dobson: For \$100.01 or greater than.

Mr. Lane: It is nice to know. I sure did not know that.

Mr. Epp: I guess, when we were discussing the municipal legislation on this, I asked someone, and I forget who, and they obviously gave me the wrong information, because they advised--and I did not have the act in front of me at that time.

As the second part of my question, does anyone want to address themselves to whether you have considered increasing that amount from \$100 to some higher figure?

Mrs. Sullivan: We have talked generally about having a look at all of the figures that are in the act. I suspect--and I do not want to speak for everyone on the commission--that the meaning would not be to increase that. That \$100 and over is felt to be a substantial enough donation in our society today that it is still appropriate that it should be disclosed.

Mr. Epp: Despite the fact that it may be doubled now--to keep pace with inflation over six years, so that to have a comparable amount it should maybe be \$200?

Mrs. Sullivan: I do not think you would find that agreement on the commission. That is not to say that is the only place where amendments are contemplated.

Mr. Lane: Excuse me, but you just used that phrase, "\$100 and over." That is what we have always worked on, over \$100. Okay?

Interjections.

The Vice-Chairman: John, she gave you a liberal interpretation.

Mr. Epp: If it is Liberal it is right.

The Vice-Chairman: John, do you want to continue?

Mr. Maddaugh: The next one on the list is number 9, in which we talk about annual membership fees and there the reporting

threshold was \$10, and again there is a recommendation that it be raised to \$25, to parallel the recommendation made earlier in connection with cash contributions.

The Vice-Chairman: Again, that may not be considered a contribution, but may be. In other words, the riding association still gives a receipt for a \$10 contribution?

Mr. Maddaugh: That is right, as long as it keeps its membership list, and the other requirements.

The Vice-Chairman: My understanding is that, if it is a \$5 membership fee--they cannot give a receipt for less than \$10. Is that correct?

Mr. Maddaugh: Yes, they can give a receipt.

The Vice-Chairman: For \$5?

Mr. Maddaugh: Yes, they can give a receipt for any amount.

The Vice-Chairman: You can give a receipt for \$1 if you wish to, in other words?

Mr. Maddaugh: Right.

The Vice-Chairman: So now the optional amount for memberships is up to \$25, and you may or may not give a receipt?

Mr. Maddaugh: That is correct, provided that you keep a membership list, and there are a number of other requirements in that section.

The next amendment is to section 34, in connection with chief financial officers. Again, there is some housekeeping there, and if a chief financial officer should disappear, die or what have you, there is an obligation on the corresponding candidate, constituency association or party to appoint a substitute forthwith and inform the commission of his name and what have you.

As to section 35 of the act, you see a long amendment there, but it really is rewording as opposed to substantive change. It gets into a bit of a complicated area, as you will know. During a year, both political parties and constituency associations can accept contributions. Candidates can only accept contributions during a campaign period. On the other hand, political parties, unlike constituency associations, can accept additional amounts during a campaign period. So, depending on the entity, we have three different time periods to play with. The drafting of section 35 did not comfortably fit within those time frames and technically had to be rewritten.

Furthermore, the reporting requirements on receipt of contributions has been taken from section 35 in our new draft, and put up with the other reporting requirements of the act, up in sections 41, 42 and 43 of the act.

So it is is a very technical amendment, which in substance

really does not change anything. It is really to make the act work better as a harmony.

The Vice-Chairman: I have one question on that, because you mentioned that a candidate can only accept money during a campaign period.

You have a situation, and I am sure many ridings do, where they almost keep two sets of books, in a legal way--it is sort of campaign money but it is held by the constituency association and transferred to the campaign. Anything left over is transferred back again. It is really a legal fiction.

Why would you not allow a candidate as such, once he has a nomination, to be able to put money into a candidate's campaign fund rather than into constituency funds, even before the writ is issued?

Mr. Maddaugh: I suppose, in effect, that is exactly what is happening, as you described it, through the constituency association and through an established association which is used to reporting regularly and when most of those funds are--

The implication of your question, though, I take it, is for the poor independent candidate, who does not have a constituency association and thus is, in effect, foreclosed from campaigning or raising money during the off period, the noncampaign period.

The Vice-Chairman: Or even the party candidate who, for whatever reason, wants to keep his campaign money separate from his constituency money.

Let us suppose that for some reason I get nominated for the next election now, which is unlikely. But if I was nominated, I would be a registered candidate for the next provincial election, whenever that may be. Why should I not be allowed to hold a fund-raising dinner for myself rather than my riding association holding it, provided that it is all reported and all done properly--for my campaign fund, where you cannot open that bank account until the day writ is dropped? Why should I not be able to do that a year before the writ is dropped, providing all the rules are followed and everything is registered?

There probably is an answer to it, but I have heard this discussion, and I wondered if you could might indicate why that could not happen.

Mr. Maddaugh: That is right. You are striking to a very fundamental feature of the act in that regard. I can't give to you the policy thinking that leads to why there is that cutoff on the candidate outside the campaign period, i.e. why he is forced to work through his registered association.

The Vice-Chairman: Especially, as you say, the independent candidate who does not have an association is really at a disadvantage, because he cannot raise money before the campaign period.

Mr. Maddaugh: That is right.

Mrs. Sullivan: I think another aspect of that is that the day of registration of the candidate is subsequent to the writ, even though the candidate may be nominated under the Election Act at a different time.

The Vice-Chairman: I understand that; but that gets down to the fundamentals of the act: Why would the candidate not be allowed to be registered before the writ?

Mr. Lane: Assume that he has some people, not necessarily supportive of the association, but very supportive of the member or the candidate, and in order to save a little tax in December such a person decides to send a cheque to the chief financial officer in trust. He has really given that cheque to the chief financial officer for the election campaign of the sitting member or whoever would follow him, not really to the association. So the association can take that money and spend it for whatever they think is right, and yet the fellow has really made the donation to the member or to the chief financial officer for the member's use. There is quite a difference there as to what the money is used for, yet you are saying it is illegal to do that.

Mr. Maddaugh: That is right. It is all right for the constituency association to accept funds for its purposes outside the campaign period, but not on behalf of the candidate outside of the campaign period.

The Vice-Chairman: Yet when the writ is dropped, that money gets transferred.

Mr. Maddaugh: Quite right.

The Vice-Chairman: I think the point Mr. Lane is making, and that I am trying to make is we know what the act says, but philosophically, can you give us any reason, as a commission, why the act should not be changed to allow someone, in Mr. Lane's case, to donate to his next campaign without having to filter the money through their riding association?

The citizen may want to donate it for campaign purposes only. The riding association gets their hot little hands on the money and may spend it on something else, and come the campaign period the money is not there. In a way you may be frustrating the will of the donor and yet the act doesn't allow the money coming in to be specifically earmarked for the next campaign.

Mr. Maddaugh: In your situation, if I understand it, you have an official registered candidate who is doing that. You do not have three or four possible candidates running around in a constituency.

The Vice-Chairman: No. Say a riding association--the Algoma riding association--has already nominated John Lane a year before the campaign period. What I am asking you is if you have not given the registration, why shouldn't the candidate be able to be registered for the next election before the writ period, and then go out after his money?

Mrs. Sullivan: There is no reason, it is just the law.

The Vice-Chairman: Do you have an opinion of whether the law could or should be changed? Is there any reason why it should not be changed, any reasons why we would get into trouble if the law was changed?

Mrs. Sullivan: Perhaps Mr. Dobson could respond to that.

11 a.m.

Mr. Dobson: I am not entirely sure of the total rationale. Having regard to the prelude to the language of the law, one can fairly presume, however, that among many other objectives and features of the statute as brought into being in 1975, would be the financial accountability of Ontario's political life.

As such, it was viewed to have that type of control expressed by prohibiting a candidate from accepting contributions, by section 15(1), by "any person, corporation or trade union," except through the association or party until such time as two eventualities evolve: the writ of election being issued and, of course, his nomination by the association, attesting to the successful nomination of the candidate by--further on in section 15--"his or her attestation as a nominated candidate is subscribed to by the association's chief financial officer."

I can only presume it was in concert with the objective of the accountability in financial terms of moneys relating to Ontario's political life, without any additional rationale known to me.

The Vice-Chairman: All that part about accountability and being accepted by the association I am not questioning. The only part I am questioning is that that cannot happen until after the writ is issued.

I am asking, with all the controls what is the rationale for not allowing that nominated candidate to be registered before the writ is issued?

Mr. Breaugh: I think there was some discussion as to the concepts of sponsored candidates. An attempt was made to (a) avoid that idea and (b) where there was an election expenses act it would focus on the holding of elections and keeping to a single source the (inaudible) just for accountability purposes.

The Vice-Chairman: I do not want to belabour the point. I think it is something we must consider. Do you want to proceed?

Mr. Lane: Mr. Chairman, I would like to take a look at (inaudible) here because I am a little concerned in the model we have of these swings between federal and provincial elections where people would not want to be knowingly supporting an association, but would not mind knowingly supporting an individual. Each year they get in the habit of throwing in \$200, or whatever, to get a tax rebate and to help their sitting member or their favourite person along.

They are assuming that this financial officer is keeping that money separate even though it is all in one account. As David said, it is really two sets of books. They are assuming they are helping the guy in office and not the association, particularly because when it comes to a federal election, they will be making a donation the other way around.

You know, if that was spelled out to the public, we would have a hell of a lot less money coming in than we have now, I can tell you that--in my area, anyway.

Interjection: Spell it out for them, John.

Mr. Lane: I would not bother spelling it out. Somebody else may.

Mr. Breaugh: Since it is my civic duty, I will go up and tell them the details.

Mr. Lane: Really, there is a problem there and I sort of have a feeling we should have some--

The Vice-Chairman: Mr. Lane, the commission has sort of indicated at this time--I am going to comment; it is something our researcher will be looking into between now and when we discuss their reports.

Mr. Lane: I think it is something that is not really well understood out there and it could make quite a difference in some ridings as to the amount of money that is put in each year.

Mr. Charlton: Mr. Chairman, if I could just go back to the question you asked a moment ago: obviously I was not there when all of this was done, but I think probably one of the rationales for the limit on campaign accounts and the limited period is the rationale around the fact that an individual can make two maximum donations in an election year, one to the party and one to the campaign.

One of the problems you would obviously run into and have to consider whether it was appropriate or not, if you went the route you had suggested, would be whether or not that process could happen in more than one year around the same election. For example, if a candidate was nominated three years ahead of when the election was actually called and started collecting campaign funds, would you get into the situation of, in fact, double-donating in each of the three years?

The Vice-Chairman: My opinion is that if you decide to allow donations to a candidate in a nonwrit period, you could cover that off by plugging that loophole for noncampaign periods. You could say there could only be one contribution in total, except during a writ period. That could be covered off if it was deemed advisable to allow a candidate to collect his own funds within the limit.

Is there anything further on that point? Mr. Maddaugh, do you wish to continue?

Mr. Maddaugh: The next on the list is amendment number 12 suggesting an amendment to section 38 of the act, which speaks to advertising restraints, in particular, the ban on advertising "except during the period of 21 days immediately preceding the day before polling day."

The first amendment in that regard is a purely technical amendment. The section as it currently reads is a prohibition on a person so advertising in that period. As you know, under the act a "person" is defined to exclude a corporation or trade union. The correct drafting to catch the policy there would be a "person, a corporation, a trade union or other unincorporated association or organization."

It is just a drafting defect that we noticed when there were some concerns that perhaps newspapers and other corporate entities were alleged to have breached that provision. We noticed that if that were the case, we had nothing to catch them with because of the drafting error in the original act.

Mr. Breaugh: There is a relatively recent phenomenon in Canada of either individuals or groups participating in the electoral process in a rather unorthodox way: flogging certain leaflets through ridings which do not necessarily tell you who wrote the leaflet in the first place; placing newspaper advertisements espousing a point of view either for or against a candidate; or, on some occasions, I think it not unreasonable to say, publishing outright lies in the newspaper.

The practical problem is that they publish that 10 days before the election. You have, of course, the right to sue them and go off to court, all of which will be resolved three or four years down the pike. But there is no means of really controlling that.

Have you given any consideration to an attempt to at least monitor that situation? Even if we all thought the ad in yesterday's Globe and Mail was really atrocious, scandalous, malicious, a lie and we all thought that was terrible, there really is not anything during an election period that any of us could do. Have you given any consideration to that particular problem?

Mr. Maddaugh: That was the next point I was going to come to in that particular drafting of section 38(1). That current section goes on to speak to people acting with the knowledge and consent of the political party or candidate, as the case may be. That, of course, excluded that whole area you just described, the third party who is doing it independently for one reason or another.

The amendment to the section then goes on to remove that so that all political advertising is banned except in that 21-day period.

Mr. Breaugh: I take it from that, if somebody took out an ad in the newspaper or did a leaflet in a particular riding, that is your definition of political advertising. If it speaks to a political issue or a particular candidate, you define that as being political in nature. So it might resolve that problem.

Mrs. Sullivan: Under the amendments, it would, but pamphlets would not be covered. Only paid advertising or paid broadcasting that is actually inserted in a periodical or on a broadcasting facility is still covered by the act.

Mr. Breaugh: It is a very difficult problem because you do not want to suppress the public's right to say whatever it wants to say. On the other hand, in all fairness, people are particularly vulnerable in a campaign period to someone out there who has the money to put an ad in a newspaper or do a pamphlet.

On many occasions it is not clear--to be polite about it--just who exactly is saying all of these things. Many of them purport to be organizations very large in size. Some of them do not even bother with the nicety of giving you a ball-park idea of who they are or what they stand for. There are all kinds of wonderful names springing up now about particular groups. It is a phenomenon that is fairly recent but one which I am rather unhappy about because there is no accountability in the process. There is really no fairness in it. I guess the only way to combat that is to use the same technique against that group, which seems to me to not be a desirable proposition, either.

Mr. Maddaugh: There is certainly no role here for the commission, as we see it, to watchdog the content of any of the advertising. It is simply to ensure it does not occur except within the permitted periods. It is a very procedural type of role.

Mr. Breaugh: I guess this is flowing out of the American trend to get involved in that. In the United States, in particular, substantial amounts of money are spent on issue campaigns, one-issue politics, where they feel quite free to adopt almost a guise of anonymity. They will attack particular candidates in a most vicious way.

They seem to be kind of just letting it run its course. It appears to be coming into our process as well and that disturbs me. I am really unhappy that I can watch ads for American contests now which sure do not tell me anything about the candidate or the party or the platform. All they tell you is that one guy is a liar and the other guy is a good guy.

Many of them do not even bother with the good guy part. It is just straight, negative advertising designed to convince the public that this particular candidate for governor of the state of New York is a jerk or he lied to you.

I guess you are right, the election expenses commission is not the vehicle to deal with it.

11:10 a.m.

Mr. Rotenberg: Except for this, Mike. I would agree, they cannot get into anything about content, and you cannot get into the leaflet thing. There is nothing to prevent a guy from going to a printer and printing a leaflet and handing it out. But because you have media rules--because not only the party of the advertisement, the media themselves, be it printing or broadcasting, can be somewhat controlled by our act; in other words, it is not just what

a candidate or party can do, it is what the media can accept as advertising that can be legislated--what might go to your point is that some consideration should be given to putting something in the act that none of the media can accept paid advertising unless the advertiser is either registered with a party or meets certain other criteria of responsibility.

So the Scarborough East Moral Majority Club cannot walk into the Toronto Star and put in a full-page ad for or against the existing candidate or the existing member without the media having ascertained that whoever in that group is placing that ad has met certain registration qualifications to be a political advertiser. They could be quite considerably less than being a political party.

The only way you can get at this problem is to have qualifications and rules for a political advertiser who is going to spend money in the media, and that would at least get to your responsibility point. If they put an ad in the paper calling you or me a liar we know who we can sue if we want to sue because the media cannot accept the advertising until the person who pays for the ad is registered and is responsible, and we know who they are. That covers part of your point.

Mr. Breaugh: It is a very thorny piece of business here because you are interfering with the right of an individual in our society to say whatever he wants to say, which is not my intent. But clearly, there is a problem developing there that does not have much accountability attached to it. The political ramifications of it are really pretty severe when a group out there, or, as a matter of fact, it is relatively common that one person can purport to be a group, whatever name they want to put on it, can say all kinds of atrocious things about anybody in a critical election period.

Mr. Rotenberg: We saw some examples in the last provincial campaign.

Mr. Breaugh: Sure. There are always examples like that out there. In our area it is relatively small. It tends to be somebody who runs a tavern, and is an extreme right-wing person. He puts a funny little quote in the ad for their steak dinner tonight. Hardly something to bother about. But in other cases and certainly in the American example, they have targeted certain people that they want.

They apply a name which suggests that the majority of the citizens out there think this senator is a bad person and has voted improperly and done evil things and is for the killing of small children, and they stick that in, in concentrated advertising technique, just prior to election day. Now the damage is done. You can go sue them afterwards if you want to, but the fact is you have been defeated. They have accomplished their purpose and you do not have any redress.

Mr. Rotenberg: Would you think that consideration should be given to registering political advertisers with some criteria so at least it would give accountability?

Mr. Breaugh: That would be one way to at least monitor and

there would be some accountability in there. You can at least know who to sue afterwards.

Mr. Rotenberg: I could not (inaudible) to rules and regulations for someone to censor political advertising or monitor it. We have laws of libel and slander. But to know who they are I think is something we might consider.

Mrs. Sullivan: Mr. Chairman, while it is an idea we are pursuing, I suspect that particular idea might be flawed in that the Charter of Rights and Freedoms might interfere with its acceptance. One of the things that might assist in this act is something which is part of a federal act, that advertisers must indicate who is publishing the advertisement in the course of making the advertisement, and that is not a factor in our act.

Mr. Rotenberg: That is the sort of thing I am getting at.

Mrs. Sullivan: Even if that step were taken I think that people might be a little bit more responsible.

Mr. Rotenberg: Except it could be the Oshawa Good Government Group or something like that and they say, "This is published by the Oshawa Good Government Group" and you have no idea who they are. They come into the Oshawa Times and put down their \$300 for the ad and tomorrow they are gone.

Mrs. Sullivan: It is still a step further than what exists now.

Mr. Rotenberg: At least they have to have an address and a name of a person.

Interjection.

Mr. Rotenberg: What I am saying, should there be a rule the newspaper cannot accept the ad until they have some minimal registration of who they are? That is what I am getting at. Because if it is just the Oshawa Good Citizens Group who want to get Mike Breagh--and of course that would be a good thing--but unless they have a name or an address attached to it--I mean, it could be the "Oshawa Good Citizens Group, PO Box 17," and who are they?

Mr. Watson: What responsibility does the media have if they break this rule on advertising ban?

Mrs. Sullivan: That is the reason for this amendment. At this point the way the act is worded, the word is just "person." At this point we cannot right now go after the publisher of a newspaper who publishes outside of the limit. We send them nasty letters but that is all we can do.

Mr. Watson: The only person who is responsible now is the candidate, is that right?

Mrs. Sullivan: The person who publishes on behalf of a candidate with the candidate's knowledge.

Mr. Watson: I went through this because a paper published an ad which was not done at our instruction and they said, "Well, we have checked and we cannot do anything." The nasty letter route went which--

Mrs. Sullivan: That is why we are asking for this amendment. We feel the corporation, which would include the publisher of the newspaper or the trade union which might publish an ad or an unincorporated association which would also cover other groups, ought to have been included in the provisions of this section of the act.

Mr. Breaugh: Have you given any thought to registering, much like David was suggesting, other groups who are involved in the political process but are not a political party?

Mrs. Sullivan: No, I do not think we have.

Mr. Maddaugh: --including those organizations that collect funds, and it is the financial administration that was the main theme of this act.

Mr. Breaugh: There is now in Canada a reasonable number of groups that do considerable amounts of fund-raising, publish political material on a regular basis, purport to do surveys, purport to represent--

Mr. Chairman: The committee for re-election of Remo Mancini.

Mr. Breaugh: I am thinking of groups like the National Citizens' Coalition, very active in the political sense, purporting to represent a large number of people, purporting to do surveys on political issues, consistently advertising, mailing extensively and that is a totally unregulated group, whereas a political party would have to do a lot of things about telling you how they raise money, what they do with the money, at least reporting on it.

I am wondering if maybe that is an area where there ought to be some thought given to at least registering and having a neutral source referee what is going on with these groups.

Mr. Chairman: It is probably registered as a charity.

Mr. Breaugh: There would be other groups as well. Another one I can think of offhand would be a group like Pollution Probe which is also very active in the political sense around issues and gathers, I take it, reasonably large amounts of money. But there are other groups now other than political parties who are active in politics, do fund raising, participate in a number of ways and they are not regulated.

Mrs. Sullivan: I think the difference is that they are not fielding candidates for election and as a consequence--even where political parties are fielding candidates, the commission is not looking at what they are saying, is not looking at the content of their message in any way.

That is not what we are going to do. The whole act really relates to the election of candidates to office and the conduct of the affairs of their associations.

Mr. Rotenberg: Take that one step further. Say the Oshawa North Good Citizens Group is formed, no affiliation to any political party. And the Oshawa North Good Citizens Group--which is not in Mike's riding but next door--sends out a pamphlet during a writ period saying that, "Mr. Jones has been a great member, we are the Oshawa North Good Citizens Group, who are not (inaudible) political party, supporting Mr. Jones." Or "Mr. Smith has been a lousy member and this group thinks he should not be elected for these reasons."

That is a group you cannot get at under the present act because they are not a political party and yet they could be used especially if we ever get to the point where someone wants to put a cap on total expenses. Someone could do that sort of thing.

Mr. Chairman: Why do you want to inhibit that group?

11:20 p.m.

Mr. Rotenberg: No. It is not a case of inhibiting the group. That group might be out there then collecting money and spending money, which under a guise of being a good citizens' group is really electioneering.

Maybe they are not a political party and therefore you should not be getting at them, but maybe they, in some way, have some connection with political parties, a way of a party filtering money out that they do not want to be accounted for, or a way somebody wants to give an extra couple of thousand dollars to a candidate doing it this way because he exceeds his limits. Should we be, in any way, or can we be in any way--which is great political advertising over a period--control those things?

It is just beyond the act now but it should really be in the act.

Mr. Chairman: No. This new subsection would provide, on page 10, you would catch them on that.

Mrs. Sullivan: That is right.

Mr. Rotenberg: Not distributing leaflets; you would on advertising media.

Mrs. Sullivan: But I do not think the commission would ever want to get into monitoring the content of messages that were distributed by people in politics.

Mr. Rotenberg: It is not monitoring the content; it is just the fact that it is a--whether the message is good, bad or sideways is not the point. It is just the fact it is a political message during a--

Mrs. Sullivan: This subsection would cover an association like the one that you have mentioned as an unincorporated

association when it advertises in the public media. That is the only case. That is the only way we look at advertising of the political parties as well.

Mr. Watson: You are proposing to stop at the advertising point. That would be the point at which you would intercept. They might--

Mrs. Sullivan: We do not see the advertising until it has occurred either.

Mr. Chairman: Timing.

Mrs. Sullivan: So we would not intercept it.

Mr. Watson: Well, intercept maybe is not the right word. But what I am saying is the responsibility for not printing it would be with the advertiser rather than with the group for not ordering it. At the present time, a group, anybody, any of the candidates here, their associations are the ones that are responsible and the advertisers, the broadcasters and every newspaper are not on the hook for anything. Would they do something on their own? You cannot do anything with them at the present time. This amendment says that they are going to be held responsible.

Mrs. Sullivan: We can get the publisher now.

Mr. Watson: Therefore, any of these groups which do not have political affiliations are the advertisers, but the responsibility is going to be with the publisher to not print.

Mrs. Sullivan: That is right.

Mr. Charlton: What would happen in a case like the one Mr. Rotenberg described where what appeared to be an independent group with no political affiliation that they would admit to was, in fact, advertising during a campaign period in support of a candidate?

Mrs. Sullivan: Right now there is nothing we could do about that.

Mr. Maddaugh: Under the new amendment all he could do is, like a political party, only advertise during the permit period and it would be--

Mr. Charlton: But there is no way you could try and have a look at that advertising in connections between the group from the perspective of whether or not advertising for that candidate was over the limits then.

Mrs. Sullivan: It should have been deemed a contribution.

Mr. Chairman: What do you mean, "over the limits"?

Interjection.

Mr. Maddaugh: The contribution limits only come into effect if that advertising is done with the knowledge and consent of

the political party involved. I take it your example is probably a case where there would not be that knowledge and consent.

Mr. Charlton: The question becomes whether or not you could ever prove knowledge and consent. The knowledge and consent may be there; it is a question of whether or not you can ever establish it.

Mr. Chairman: What about a requirement that the candidate approve and consent to any publication on his or her behalf?

Mr. Rotenberg: What if it is against--

Mr. Watson: But Mike's point is that he is not (inaudible) that side; he does it at the other side. He does it in publications that--

Mr. Mancini: I think we are talking about censorship.

Mr. Breaugh: The area where I have some trepidation in this, and I admit to it, the area where I see some unfairness is that the political parties, in the course of an election campaign, are now heavily monitored and heavily regulated, and yet there are other groups springing up and becoming more and more of an influence, I suspect, on the electoral process that are totally unregulated and totally unmonitored. I think we ought to at least put some fairness into the rules here.

Mr. Mancini: Mr. Chairman, I have groups in my riding who belong to different organizations and many of these groups sometimes have executive meetings before they decide which candidate they are going to vote for. Then if they have a general meeting, they tell their membership, whether it is the greenhouse growers association or the Essex county fishermen or a group like that.

What are we going to do? Are we going to prohibit these groups from having meetings too, and prohibit them from telling their membership who they should vote for if they feel the member has been good or bad for them? We are really talking about censorship.

Mr. Rotenberg: No. What I am getting at is not to prevent it, but at least to know who is doing it.

Mrs. Stevenson: (Inaudible) certify a committee if it is a problem? It's not as if we can make a firm recommendation, yes or no. It is a very serious problem. It needs a lot of study.

Mr. Rotenberg: The point is if the Essex North Good Government Group puts a big ad in the Windsor paper saying, "Remo Mancini is a bad guy and we should not vote for him," and lists all sorts of things about you that are not true, you cannot prevent that. But would you not at least want to know who the Essex North Good Government Group is?

Mr. Mancini: Even if they belonged to a worthy organization that is taking care of a group already existing in my riding, they may be able to tell their membership things that are not true.

Mr. Rotenberg: Sure they could. All I am asking is that you should be able to know who they are. That is all.

Mr. J. M. Johnson: In your past experience, have you ever had this problem brought to your attention?

Mrs. Sullivan: Once or twice, and we have had a couple of instances where a publisher has mistakenly or unmistakably put in advertisements past the limit time that we have had to deal with and could not deal with them. We have had complaints from candidates during that time.

Mr. Chairman: Do you want to carry on, sir?

Mr. Maddaugh: The subsection of section 38 is further amended. There are exceptions, as you know, to this ban on advertising on polling day and the day before polling day. These are listed in the act, advertising of public meetings, locations of constituency headquarters, and that sort of thing.

The commission has recommended two additional items to that list of exemptions, namely, advertising for volunteer campaign workers and announcing services for electors on polling day, such as free cab rides down to the poll and that kind of thing. Those are questions and problems that have come up during the years of administering the act where the commission felt they were of the ilk of the exemptions already permitted and should be added to the list.

A further amendment--actually, there were two areas of amendment here--concerned problems that arose in connection with weekly newspapers that only published on the day before polling day. We recommended an exemption there.

In fact, an exemption was passed by a private bill a few years ago and that has been remedied. The other area has not and it still remains a recommendation, and that deals with commercial billboard advertising. There, after many submissions from the industry, the commission was persuaded that there was a practical problem of having all the billboards brought down at midnight, the day before the day before polling day, and that, in the case of billboard advertising, an exemption should be had for leaving those signs up during the prohibited period. The commission has recommended, for some time, that a further exemption be given in that area.

The next amendment concerned the foundation reportings. At the moment, only a report of expenditures of the foundation are required under the act and the commission felt, for a more complete picture of the financial situation of the foundation, they were recommending a statement of assets and liabilities for each year.

In number 15 to the act, in section 41, the auditing section, there are a number of technical amendments. One was noticed very early on in the piece. For example, there is a requirement under the act that all members of a firm be licensed under the Public Accountancy Act. You have national concerns like Clarkson Gordon, Thorne Riddell, and what have you, which may well have partners licensed in British Columbia, Nova Scotia, and so on. Technically they would not qualify as auditors under our act since all their

partners were not licensed under the Ontario act and the amendment requires that the partners resident in Ontario be licensed under the Ontario act as a technical amendment.

A section has also been recommended for a few amendments to tie in with the audit fees to additional financial reporting that we are going to recommend a little later in the act, and a general provision that the audit fees be paid out of the consolidated revenue fund.

11:30 a.m.

Then we come to some fairly lengthy amendments to sections 42 and 43 of the act. They are extremely technical drafting features rather than substance and parallel the amendments we made to section 35.

In substance, it is intended to harmonize the reporting of the collections that take place in three periods. As you know, political parties can collect during the year and can collect additional funds in a campaign period. Constituency associations can collect during the year, but have no additional contributions during a campaign period. Candidates can only collect during a campaign period. So the intent there is to harmonize the reporting of that.

Furthermore, there has always been a problem at the administrative level of the commission in terms of the current wording of reporting. Let me give you an example. We call it the "time versus purpose test."

Suppose a party pays the rent on its headquarters for the year and it pays that bill during a campaign period. Is that a campaign expense or an annual expense? If you take a purpose analysis, it is an annual expense because the rent comes up every year and it has nothing particularly to do with the campaign occurring during that time. It just happens to be when the bill was paid. If you take a time test, that it occurred during a campaign period, then you might call it a campaign expense.

For ease of administration, and after much discussion with the administrators and our auditors, what has been found to work is that, for constituency associations and candidates, a simple time test is a good way to report. In other words, expenditures and receipts that take place in a campaign period are reported in campaign period returns. Those that take place otherwise in the year are reported in annual returns.

That is a simple rule and anybody can understand it. However, with political parties, it was recognized that that simplistic approach, perhaps, was not as useful and there the purpose test has been recommended. In that case, the expenditures that relate to the annual administration, the party and what have you, are reported in the annual return, regardless of when they were incurred or paid, and campaign period expenses--that is, those related directly to the campaign period--are reported in the campaign period return. The language of the revisions of sections 42 and 43 is to accomplish that approach.

Mr. Lane: Mr. Chairman, right now the campaign period extends how long after day of the election?

Mr. Dobson: Four months.

Mr. Lane: Okay. In that four months--and I often wondered why this was the case, because it really is not a true picture of what the election cost--whatever the association has to pay, whether it be rent on a building, assistance to senior citizens, or whatever, is charged against me as part of my campaign expenses even though it had nothing to do with the campaign at all.

Are you trying to rectify that here? Because I think it is unfair. Many things might happen with money in that period of time that would not relate at all to the individual campaign expense, but it has to show as part of the campaign expense because it is in that campaign period.

Mrs. Sullivan: If you are talking about the constituency association, yes, that's correct.

Mr. Lane: Or any other moneys that the association may spend that were not related to the campaign.

Mrs. Sullivan: That's right. We have had a couple of cases--

Mr. Lane: So you are saying here we should be able to--

Mr. Maddaugh: It is recognized as an arbitrary approach for simplicity, but you use it before--

Mr. Lane: I think that is very valid.

Mr. Rotenberg: It has to be put in campaign expenses, even if it's not.

Mr. Lane: But it is not campaign expenses.

Mr. Rotenberg: No. But they say it will have to be campaign expenses.

Mr. Lane: No, I don't think--

Mrs. Sullivan: We are suggesting a purpose test for given times.

Mr. Rotenberg: For constituency associations?

Mr. Maddaugh: At the constituency level.

Mr. Charlton: Is it not correct though that, just because the campaign period is four months, it does not mean that in every constituency the campaign period has to be four months? If your return is done very quickly after the campaign, is that not the end of it in terms of the campaign expenditure?

Mr. Maddaugh: Bob, I think you can speak to that better than I can.

Mr. Dobson: A candidate's campaign period financial return may, indeed, be filed at any time the committee involved is satisfied the contributions are in, all we are going to glean, and the bills are paid, and the earlier the better in terms of the subsidy entitlement being processed and paid. Pursuant to the act, however, it is necessary, on an association's side--and, indeed, a for a political party, but let's stay with an association--that the fullness of the campaign period evolve.

The campaign period is defined as being from the date of the election writ issue, in this case February 2, 1981, to four months after polling day, July 19, 1981. All financial transactions--and this was Mr. Maddaugh's point--that did take place by the association during that calendar time frame, February 2 to July 19, were reported upon for simplistic reporting purposes, rather than the (inaudible) or Gestetner machine, which just happened to come in that period, or the normal bulletin that may have been produced, or any other continuing, year-in, year-out expenditure.

Rather than burden the willing volunteer, and have the CFO trying to segregate what truly was a campaign involvement of the association, we would have it all reported on the campaign period return.

Mr. Lane: If your CFO has already filed, how is this extra expenditure added in during the other two or three months that may follow? What happens there?

Mr. Dobson: When you say already filed, Mr. Lane, we are presuming that your own candidate's campaign has been dealt with and is under way. The four-month period after polling day would go by before the association's campaign period return would be processed, and everything financially during that time frame would be reported.

Mr. Lane: That is the part I thought was unfair. For instance, this is something that happened once to me, I don't think it was in a campaign period.

A certain government program was going to expire and we wanted to notify all the farmers that if they did not have their application in by a certain day they were not going to be eligible. If you feel there is not widespread knowledge of that out there, you go to your association and say, "I think we should put an ad in the paper to tell the people this is the way it is." That ad costs \$150. It has nothing to do with my campaign, but it is charged against my campaign because it happens to be in that campaign period.

Mr. Dobson: It reflected in the association's campaign period file, yes.

Mr. Rotenberg: I want to take the other side of that coin. If you are taking the time test and not the purpose test, what John says is true, because people do make political hay out of how much a person has spent on a campaign. Because his association may have spent X number of dollars after the election day on other things,

but that is deemed to be part of the campaign, that looks like he spent more on his campaign, but, if you turn it the other way around on a time period, you are talking about when you pay the bills.

The constituency association could incur a major expense during the campaign and pay the bill on July 20 and, therefore, it is considered an association and not an election expense. So a candidate could, in effect, show he spent less money when, for whatever reason, some people think is politically good to spend less money. There could be a bill for \$8,000 or \$9,000 to the constituency association for election purposes, which was paid on July 20, 1981, and would show up as a constituency expense and not a campaign expense in spite of the fact that it was spent on the campaign.

So, with respect, when you are using the time test and not the purpose test, I think you are in that way really frustrating the intent of the act, because money that is spent on elections should be reported for elections.

Mrs. Stevenson: The average person looks at the candidate's return, not the constituency association's. That is the one that is published in the papers. So these expenses we are speaking about are shown in the constituency return and they are not published and they are not looked at the same way.

Mr. Rotenberg: But they are available.

Mr. Charlton: I think there is a little bit of confusion. The constituency association's campaign return is just a separate return that shows what happened to the association's accounts during the four-month period. The \$150 that John is talking about that the constituency association spent on July 15 for an ad to inform farmers of something does not show up as a campaign expenditure in the published material that goes out.

Mrs. Stevenson: It shows up in the constituency association return, but people really are not too interested in that. They are really fascinated by how much Mr. So-and-so spent in his campaign, not by what the constituency association spent.

Mr. Charlton: And the question you have raised, David, about bills that are paid after the campaign period, campaigns that have debts, where the debt is then transferred from the campaign to the association, that shows up as part of your campaign statement.

Mr. Rotenberg: Only if it was billed to the candidate originally. If the constituency association assumes the expense instead of the candidate, if the constituency association is going to pay for printing of a mailing and did not pay the printer until July 20, it would not show up as a campaign expense anyway.

11:40 a.m.

Mr. Epp: That needs clarification, because assuming, just taking that example, that you put out a brochure and you decide with the printer that you are not going to pay the bill until July 20--

Mr. Rotenberg: That is the constituency association, not the candidate.

Mr. Epp: Yes. The printer doesn't care where he gets his money from, as long as he gets his money. So you put out some brochures during the course of the campaign and you say: "That is \$10,000. Usually we spend \$30,000, but this is going to show as \$40,000. All my opponents will only spend \$30,000 and I don't want to be shown as spending \$10,000 more." So you pay that bill on July 20 or thereafter.

Mr. Maddaugh: On that point, I think you would take the time test as to when the debt is incurred, not when it is paid.

Mrs. Sullivan: One of the things that the commission practically does--

Mr. Epp: That is where the time test comes in.

Mr. Rotenberg: You said bills paid.

Mr. Maddaugh: I was sloppy then. Contributions received and debts incurred.

Mr. Mancini: Can I bring up a good example here? When the media was writing many stories about Mr. Grossman's expenditure, it originally stated that his expenditure was \$90,000. Later on, they checked the riding association's return and found another \$40,000 that was also incurred. Now everybody refers to his total expenses as well over \$130,000 during the campaign period. That is exactly what some of these gentlemen are talking about.

During my own campaign I came to believe that one of the political parties had spent nearly 40 per cent of its money that way. I wrote a letter to the commission asking if this was fair and I got a letter back stating that in 1975 I had spent \$150 in that manner. I know exactly how I am going to spend my money the next time, because it is very unfair to have political parties hide anywhere from 30 to 40 per cent of their expenditures and, when the expenditures are published, it looks like a pretty rich campaign. It is no wonder that things are turning out the way they are.

Interjection: They spent the same amount but it does not show.

Mr. Mancini: That's right.

Mr. McLean: There were lots of places where the Liberals spent more than the Conservatives and still did not get elected.

Mr. Rotenberg: What we are saying is why should (inaudible) not be included, because if they are not, those who want to fudge are going to fudge. Donations are the thing.

Mrs. Sullivan: When the commission is looking at them it does not look at them in isolation. Staff prepares a report, for instance, of precisely what amounts were spent for advertising by

the constituency association, along with what was spent by the candidate and so on. So we do that test.

The staff is also looking at what the constituency association spent throughout the entire year so they can monitor whether, in fact, there is \$25,000 going into research reports or something in advance. Things like that have been raised. Then the staff is on to the CFOs in the ridings to ask, "Were these really campaign expenses and ought they not to have been included in that report?"

Mr. Mancini: Another example recently was the by-election in Ottawa when Mr. Mitchell was elected. There was a significant amount of money spent by the riding association during that campaign period that brought his total to a fairly significant amount. I am just wondering if you people think that is fair. I could probably pump 75 per cent of my campaign expenditures through that channel.

Mr. McLean: Remo, what happened in Prescott-Russell? The PC member spent more than the Liberal and the Liberal got elected and the PC was sitting there. Money means nothing.

Mr. Mancini: No, but whatever is spent should be reported. That is my point.

Mrs. Stevenson: It is.

Mr. Mancini: But it is not published. You people send letters to the Windsor Star, the Amherstburg Echo and the Leamington Post and you say Mancini spent this much and the other people spent this much. In actual fact, the figures of all the candidates are really much closer than they appear and it gives the wrong impression.

Mr. Rotenberg: What you are saying then is the report should include the candidate's expenditure and the association's expenditure during that period, because otherwise one does not get a true picture.

Mr. Mancini: Exactly.

Mrs. Stevenson: If we wait for the association to file its return and the candidate is hanging on for his subsidy, it may be six months late.

Mr. Rotenberg: You can let the candidate file so he can get his subsidy, but the book you put out, this book you are referring to, shows what I spent as a candidate but not what my riding association spent on my behalf. The point that Remo is making is that that should be--

Mr. Mancini: Why should you send letters to these newspapers--

Mrs. Stevenson: The act enjoins us to. We must under the act.

Mr. Mancini: No, I am sorry. I am saying why should you send letters to these newspapers before you receive the total

picture? If you do not want to hold up the candidates' rebates, okay, send out the candidates' cheques so that they can get their bookkeeping in order.

Mrs. Stevenson: But the act orders us to.

Mr. Mancini: I know.

Mrs. Stevenson: Then the act should be changed. But that is the reason we do it.

Mr. Rotenberg: If you include the constituency association expenses in the publications--some of us at least think that should be done. It may make the publications come out a little later, the ones you put the newspaper ads in and so on--then I think you have to go to the purpose test and not the time test, at least for the constituency association because of the point John Lane brings up.

Mrs. Stevenson: We do not publish the constituency association returns.

Mr. Rotenberg: What we are saying is, in effect, that for constituency associations we should be using the purpose test and not the time test for election expenses, and then should be publishing constituency association election expenses as distinguished from nonelection expenses. The two changes are complementary, which some of us at least seem to think would be a fairer way for informing the public of what was spent on behalf of a candidate.

Quite frankly, it makes no difference whether my riding association--when they check into my riding association--or I spend the money during the election period; that is really the philosophy of the act, that all moneys collected from my election should be reported as election expenses and should be published. If a candidate is going to hide his contributions and his expenses by filtering them through the riding association so that it is not published in that book, that to me is unfair.

Mrs. Stevenson: Next year I will speak to our new chairman.

Mr. Rotenberg: (Inaudible) amendments to the act.

Mr. Epp: Who is going to be the new chairman?

Mrs. Sullivan: You know as much as I do.

Mr. Maddaugh: The next amendment, number 17 on the list, is again in the financial reporting area.

Problems have occurred from time to time where there has been a change of chief financial officer. The recommendation of the commission is that at such times when there is a change of chief financial officer, whether it be by death or he is incapable or he is fired or what have you, there be an audited report filed--for which there would be an auditor subsidy--at the end of that chief financial officer's tenure so that the new officer is starting with

a clean slate and he does not inherit all those problems which he usually cannot answer and so on.

As I say, those are problems that have been encountered over the years and the recommendation is that we do an audit at that time.

Mr. Rotenberg: What do you do if a chief financial officer screws up and does not keep proper records, then he resigns or the association does remove him and then the new chief financial officer comes in and has trouble reconstructing records and there are some discrepancies? How do you handle that as a commission?

It is certainly not the party's fault or the candidate's fault. It may be other members' fault. It may be that a chief financial officer just happened not to be capable and did not keep proper records and suddenly there is \$200 you cannot account for. What do you do?

Mr. Maddaugh: We usually try to get an auditor. The association or the candidate gets an auditor to go in there and reconstruct as best he can from whatever records there are around.

Mr. Rotenberg: When the auditor reconstructs and finds for some reason he cannot do a total job can he put in something with a note and why it happened? And if it seems to be just inadvertency, you would accept that situation?

Mr. Maddaugh: Oh, yes, one has to be realistic.

Mrs. Sullivan: It could also be listed as an apparent contravention of the act.

Mr. Rotenberg: That is the point. If the member, the candidate or the riding association was innocently involved in this, then do you, in effect, publish the fact that the XYZ riding association is in contravention of the act because they could not account for all their money? Or, if you feel it was inadvertent and reasonably explained but cannot be documented, might you accept it without putting an asterisk or a black mark beside the--

Mr. Maddaugh: We are required under the act to report all apparent contraventions to the Attorney General, without exception, including even time delays.

Mr. Rotenberg: So it is up to the Attorney General or someone else to decide whether or not--

Mrs. Sullivan: It just goes in a letter. It is not published.

Mr. Chairman: Does the candidate get a copy of that?

Mr. Maddaugh: I believe there are always copies sent to the parties involved, yes.

The next section has to do with an amendment to section 45, the subsidy section. There was confusion in the original language of the section whether the subsidy cheque should be made payable to the

candidate or to the chief financial officer. I think the practice had been to do it to both jointly at the moment out of an abundance of caution.

11:50 a.m.

In any event, we recommend that it should be paid to the candidate's chief financial officer and make that clear in the act. The philosophy was the chief financial officer is the man who has made the return. He is responsible for the finances of the candidate from day one throughout the whole piece and, as the man understanding the finances, he should receive the cheque and put it over to the constituency association or whatever arrangement has been made.

Mr. Chairman: He, I would imagine, would be getting a cheque for what, \$6,000 or \$7,000?

Mr. Maddaugh: Yes.

Mr. Chairman: You have not been south for a couple of years?

Have you had any problems, any delays that have caused complaints? Of course, it has been done jointly up until now?

Mr. Dobson: Yes, sir, the pay has been jointly arranged and a bank would accept it for a deposit only situation. It would not necessarily have to have the candidate's signature as well as the chief financial officer's signature but most of them go the route of having the endorsements affixed. We have not had any difficulties in that regard at all.

Mr. Chairman: I cannot see the purpose of the change.

Mr. Rotenberg: The purpose is, we, as candidates, are not supposed to handle money at any stage of the game. Having run in elections previously at the municipal level where you assume a personal responsibility for everything that happens--

Mr. Chairman: That money, for all intents and purposes, is a reimbursement or a payment to the candidate.

Mr. Rotenberg: No, it is a payment to the campaign, not to the candidate. If you accept the philosophy that a candidate should not touch money because someone else is handling that and he is relieved of that responsibility and liability and also relieved, in effect, of the liability of a deficit, then the chief financial officer has taken that on.

Mr. Chairman: Are you saying that during the campaign you did not have any cheques made out to you that you had to endorse at any time?

Mr. Rotenberg: There may have been--

Mr. Breaugh: Let's pursue that--

Mr. Rotenberg: Actually I really do not know. The instructions are that people make it out to the campaign fund and they go right into the campaign fund. One should not handle money.

Mr. Chairman: The damned thing could sit around for weeks.

Mr. Watson: Do you have a problem there in terms of that account ending and depositing that cheque? I am thinking of a technicality. If they have been made out to two signatures they have obviously been deposited in the bank because I have never signed one; therefore it has been accepted as deposited.

Mr. Dobson: I should imagine that would be more of a rule of thumb, Mr. Watson, than the actual negotiation of--

Mr. Watson: But I am looking at a technicality here, if the bank account is closed off--I guess if you get it in early enough then you get it back, but if the bank account is closed off, theoretically there is no place to put it.

Mr. Dobson: In our approval letter, having been approved by the members of the commission, of course, with our subsidy cheque enclosure there is persistently directed to the named chief financial officer of the candidate's campaign--always the candidate or member, as the case may be, is copied as well as the campaign auditor and by that feature the auditor's cheque is enclosed--a paragraph to the chief financial officer indicating that the bank account is to now be closed and the moneys transferred pursuant to the expression on the financial statement and in concert with subsection 45(5), almost always to the nominating constituency association I might add, and to advise us when this has been done.

We put it on the 60-day basis--30 is a little bit too much for the bank statement reconciliation and so on. If we have not had advice from the chief financial officer that indeed your campaign account has been closed out, the surplus moneys plus other residue that may have been there, we would follow up on the matter until such time as we did get a verification that the account was closed.

Mr. Watson: I guess my question is, the present system seems to be working. Why change it?

Mr. Dobson: The language of the law now makes reference to the candidate in one area and the chief financial officer in another and the amendment, as I understand it, is just to tighten up.

Mr. Maddaugh: It is quite simple. In its original draft the act is confusing as to who it should be paid to. So at a very early date we recommended it be paid to the chief financial officer. In the meantime, out of caution, we made it payable to both. As history has proved, that has worked out. It is as simple as that.

The other amendments are of a technical nature. The definition of "popular vote" for purposes of calculating the subsidy: we just tied in the definition to the Election Act so there was parallelism there. Again, that the moneys be paid out of the consolidated revenue fund.

In number 19, a technical amendment, now we have some new financial reporting sections, i.e., where the financial officer is changed or dies or what have you, to insert reference to those new sections.

Finally, a technical problem. The commission, as you know, is responsible for consenting to prosecutions under the act. There is no time limit stated in the act. Under general law, that would have to be done within six months. It can well be that six months will expire before we are even aware of the situation and we did not want people getting off on technical statute of limitations of that ilk.

So, as in many other acts in the province, we have added the appropriate language: in our case, that no prosecution be instituted more than one year after the facts come to the knowledge of the commission, which is a typical limitation period. Without that specific language there, the automatic six-month provision would have clicked in with or without our actual knowledge of the circumstances, which left us in a bit of an embarrassing position. That is a technical amendment.

That completes the list of amendments that originated with the commission.

Mr. Chairman: Thank you very much, Mr. Maddaugh. I am sure the members have a number of questions, particularly as related from our hearings during the last two days. Do you want to get into them now or do you want to adjourn for lunch and come back at two o'clock?

You are nodding your head. You are hungry. All right, let us adjourn now and come back at 2 p.m. and we will think about some questions.

The committee recessed at 11:57 a.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

AGENCY REVIEW: COMMISSION ON ELECTION CONTRIBUTIONS AND EXPENSES

THURSDAY, SEPTEMBER 16, 1982

Afternoon sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edignoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
McLean, A. K. (Simcoe East PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher, Legislative Library

From the Office of the Legislative Assembly:
Bailie, W. R., Chief Election Officer

Witnesses:

From the Commission on Election Contributions and Expenses:
Dobson, R. B., Registrar
Guthrie, H. D., Member
Maddaugh, P., Counsel
Scandlan, W. F., Member
Stevenson, A., Legal Adviser
Sullivan, B., Vice-Chairman
Zimmerman, W., Member

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, September 16, 1982

The committee met at 2:08 p.m. in committee room 151.

COMMISSION ON ELECTION CONTRIBUTIONS AND EXPENSES
(continued)

Mr. Chairman: I see a quorum. Questions have arisen out of presentations made to us previous to today's meeting regarding any amendments to the Election Finances Reform Act. I have one to start it off. What intrigues me a little is the amendment, clause 13(2)(b), regarding billboards.

I think it was mentioned this morning that one of the main reasons for this amendment is the problem of getting those particular advertisements off the boards the day or so before an election. Usually these things are by contract for 30 days or what have you. To expect Ruddy or Neon or whoever it is to run around the country on a particular day in compliance with an act is a little bit onerous on some of these companies. Although I found the last few times I used them, there has not been any trouble.

As a matter of fact, I was always keeping my fingers crossed that they would forget about one. I basically have no problem with the proposed amendment. The only area I think should be sacrosanct is the area of a polling booth so that people are not confused. As you know, you have the instruction sheets and you have a sample ballot and some names that are spelled in a way that does not make sense, as an example of the means of instruction to voters and all the other information that is outside or inside a polling booth.

2:10 p.m.

I can see the idea of having lawn signs next door or any candidate's advertising at or near or around the building, church or school would be wrong, mainly from the point of view of being rather confusing. The question I have is, what happens if you have a billboard rather strategically placed near a polling booth? Would that be considered a problem?

Mrs. Sullivan: Having been a campaign manager, I would say that is where you want them in the first place because you want people to become identified with that area.

Mr. Chairman: Oh, right. You seek them out.

Mrs. Sullivan: What we have found is that in certain areas of the province in particular there are not the physical facilities to remove the billboards on time. When we were discussing this at the commission, we talked about the polling booth areas. If, for instance, in eastern Ontario, there is one company basically supplying every riding and every riding association with billboard

signage, they cannot be in every single riding to remove those signs. I suppose if they were directed to remove two or three in each riding, that might be a lighter burden. But I suspect the candidates would not be buying them in the first place, if they were not appropriately placed.

We felt this was a simple way in that the rule would be the same for everybody in every single riding and it was uncomplicated and people could understand it.

Mr. Chairman: You do have some regulations or provisions in the act regarding polling booths, do you not? For any advertising?

Mrs. Sullivan: Not in our act.

Mr. Chairman: Oh, that is strictly federal, is it?

Mrs. Sullivan: It is in the Election Act.

Mr. Maddaugh: To clarify that, as I understand it, the Ontario Election Act does not speak to advertising either. Warren Bailie is here and perhaps he can speak to that. What you speak of may well be a federal-type provision. Provincially, as I understand it, there are no advertising rules vis-à-vis polling stations, either under our act or under your act, Warren.

Mr. Chairman: I can recall one election campaign--I cannot remember whether it was provincial or federal--where a clerk in the polling booth had a bumper sticker proclaiming the advantages of voting for somebody. The deputy returning officer had that person remove it, quoting some section of the act.

Mrs. Sullivan: That would be the federal act that was applied.

Mr. Bailie: Mr. Chairman, if I might interject--

Mr. Chairman: Would you go up to that microphone, sir? You can sit in one of these chairs here. It does not make any difference.

Mr. Bailie: It is entirely possible the scenario you mentioned did take place because, notwithstanding there is no rule in the Ontario Election Act governing advertising near or at a poll, there is what I, as a returning officer and deputy returning officer over the years, have always called one of the Lewis rules, namely, that deputy returning officers are asked to try to make sure there is no advertising in the poll area.

If someone did park with a bumper sticker, the deputy returning officers are urged--especially if someone comments or complains about it--to ask that person, "Would you mind backing the car up to the back of the parking lot or turning around so it does not offend people?"

It is strictly something we have tried to do, just to keep the peace, but it is not in the Election Act; there is no rule in the Ontario Election Act. But we do know that some district returning officers get a little overzealous.

In Mr. Watson's by-election, I happened to be down there, and there was a little bit of a complaint about a car that had a New Democratic Party sign on it at the poll. I happened to be visiting the polls, just looking at the arrangements. Here was this big church parking lot that would hold about 400 cars, it looked like. At the far corner of the lot was a van with a sign on it. It was not anywhere near the entrance. Had it been, we might have said, "We have had a complaint. Would you mind co-operating by moving your van back a way?" But in this case, we thought somebody was really reaching to complain about that.

Maybe I should not say that. Maybe it was the honourable gentleman.

Mr. Watson: What about people who come in with stickers on and are told that they cannot vote because they have a sticker for someone on?

Mr. Chairman: Really?

Mr. Edighoffer: In other words, I can put a sign up in the polling place?

Mr. Bailie: According to the act.

Mr. Edighoffer: I really could?

Mr. Bailie: The point is, the DRO does have the authority to make sure that there is peace and good order in the polls, and they take the position that, on instructions from the chief election officer, they do not allow campaigning in the actual premises. We have always had good co-operation and no problems on that one.

Mr. Edighoffer: I always complained about that because the Tories always did--

Mr. Chairman: Jack, you use all the OPP cruisers, do you not? At intersections, with big signs on them? That is a hell of a good idea. What was I going to ask you?

Mr. Edighoffer: Where should this be dealt with? Which act should that be? That should really be in the Election Act, should it not?

Mr. Chairman: Yes.

Mr. Epp: In speaking to that, if we wanted to correct them, when are we going to have an opportunity of doing it? I know we are not dealing with the act now, but when will it be dealt with, or who will be dealing with it?

Interjection: Do you mean the Election Act?

Mr. Epp: Yes.

Mr. Chairman: Are there some proposed amendments to that? If there are, we may be looking at it, as far as I know, or the justice committee.

Mr. Epp: Are there any other points within the Election Act that should be clarified?

Mr. Chairman: As you know, Barbara, the submission from the Ontario Liberal Party opposed amendment 13. It says, "There seems to be a contravention of the spirit of the act that seeks to eliminate all forms of advertising on election day." But you really do not do that, do you? I suppose that the existing provision regarding billboards does do that.

Mrs. Sullivan: The existing provision does that, or attempts to do that. We found that it is impractical to apply that because there are few enough sign companies around to get these signs down. At one point when we were discussing it, someone said, "Well, the alternative is no billboard signs at all."

Mr. Chairman: That would be a shame.

Mrs. Sullivan: So this was a compromise position.

Mr. Chairman: The idea of looking at a billboard for three or four weeks, and then not being able to see it on election day, seems ludicrous.

Mr. Edighoffer: I suppose if you said, "No billboards," you are saying, "No lawn signs."

Mrs. Sullivan: But we are not into that.

Mr. Maddaugh: The act only makes the distinction between commercial billboard advertising as opposed to private.

Mr. Chairman: The other one was amendment 14, about which there was some comment.

Mr. Edighoffer: It had to do with the foundation, and informing the commission of all the assets and liabilities. What was the reasoning behind that?

2:20 p.m.

Mr. Maddaugh: We should point out that some of these amendments came out very early in the day, when the act was first passed and the commission first met. Since that time the commission membership has changed 100 per cent in terms of commissioners and what have you. At that time we noticed that financial reporting from parties, constituency associations, etc., was a full financial report in terms of a statement of assets and liabilities and a statement of expenses and receipts. Foundations were the one exception. Foundations simply had to report on expenditures during the year. It was for the feeling of completeness that foundations report assets, liabilities and receipts and expenditures.

The one point that was not addressed in that amendment that was addressed yesterday was the question of confidentiality with respect to assets and liabilities. Frankly, that point has not been addressed in the proposed amendment.

Mr. Watson: What numbers of foundations are you dealing with here?

Mr. Dobson: There are only two in effect. From the Progressive Conservative Party, there is a fund called the P and T fund. I am not sure what it stands for. On behalf of the Liberal Party, as it was named then, the Liberal Party in Ontario Foundation.

On an annual basis, on or before May 31, we have received from the trustees of the named foundations, only two of them, a format that we designed in keeping with section 40 of the act, which details a reattestation that nothing has been added to that particular fund save interest earned and provision for moneys they have expended during the previous calendar year. That is the extent of the report. There never was the necessity nor the requirement for the revelation of the funds in hand at the time the act came into being. We have no knowledge at all in that area.

Other trust funds at the time the act came to life included moneys held in trust for future campaigns, the residue, if you will, of the then provincial election of 1971, and bank balances which were of course declared, and almost all of them have now been depleted because of the three general campaigns subsequently. But on the subject at hand, the two foundations report on an annual basis.

Mr. Epp: Do they report to you or register with you the amount of interest they get every year?

Mr. Dobson: No, they do not. They only make a declaration that nothing other than interest has been added to the account.

Mr. Maddaugh: That is right. There is no requirement on the actual interest received.

Mr. Dobson: No. That is right, just merely the stated declaration that we have not added anything to this other than earned interest.

Mr. Epp: So you would not know whether that is accurate or not? There is no way of checking up?

Mr. Dobson: No. The Ontario Liberal Party, although it is not invited by the act, nor commanded by it, affixes an auditor's attestation. It is a voluntary gesture on their part and it is not required for them to do so.

Mr. Epp: Which just goes to show you how honest they are.

Mr. Chairman: The concern seemed to be the data that would be made available to their political opponents.

Mr. Edighoffer: It was the amount that would be made available.

Mr. Chairman: Yes, in compliance with section 16. As you know, all documents that are filed with you are public records. I was not aware of this, but when the act was passed in 1975, each party was guaranteed privacy in the affairs of its foundations with regard to public access to the financial data.

Is that some assurance that was made in the House, or is there something in writing to that effect, or was that just supposed to be the spirit of establishing these foundations?

Mrs. Sullivan: The foundations were set up under section 40 of the act. They had to be consistent legal investments under certain other acts and they included what were basically, at that time, the assets of the political parties. It was, I think, through an all-party agreement that those funds would not become public information. It was felt to be unfair for parties to have to disclose what were in those funds.

If one party had \$10 million in a foundation and another party had \$750,000 and another party had \$75,000, from that point on it did not matter because the act was going to be applied equally to everyone else. They could no longer add to those funds, other than through interest. They could expend from those funds through a reporting manner through the system; that is, when funds were transferred out, they had to go through the political party or the constituency association, or whatever. So the foundation really only exists now as a method whereby the political parties can use those funds to guarantee bank loans. That is basically how they are used by all private parties that have them.

Mr. Maddaugh: Just a supplementary to that, Barbara is quite correct. The operative provision, I suspect, is subsection 1(4) of the act, which states very specifically that "the act does not apply to funds held in trust as of 3 o'clock in the afternoon of the thirteenth day of February 1975." So there was a clear, dividing line as to when that came into force.

My recollection is the reasoning behind the proposed amendment was to ascertain that the reports on the foundation thereafter were correct. If that entailed keeping confidential statements of what the initial assets and liabilities were, probably an amendment to the public disclosure sections of the act would have to be appropriately made as well. I do not think the commission put its mind directly to that point. But certainly the desire of the commission was proper monitoring of those trust funds in the foundations and not violating the spirit of subsection 1(4), which was disclosure of the amounts prior to the cutoff time.

Mrs. Sullivan: At the very beginning the amounts of the funds that existed were disclosed to the commission and have not been disclosed since that point.

Mr. Mancini: Is that public knowledge?

Mrs. Sullivan: The trust funds, certainly.

Mr. Rotenberg: Is it my understanding that the party takes money from its foundation to use it and will report it as a donation from the trust fund foundation to the party?

Mrs. Sullivan: As a transfer.

Mr. Rotenberg: As a transfer. So that would be reported. In other words, what is on there and squirrelled away nobody knows about it. If they want to take any money out, it is reported as money coming from the foundation to the--

Mr. Dobson: Yes. That is correct.

Mr. Rotenberg: And interest earned in the foundation of the money that is there is not reported.

Mr. Maddaugh: Only the fact that only interest has been earned.

Mr. Rotenberg: There is no legal way to put any more money in.

Mr. Maddaugh: And we want assurance to that effect and that is what is filed.

Mr. Dobson: There is an attestation that is duly witnessed.

Mr. Chairman: The amendment will require more than a statement of expenditures of the foundation. It will set out a full financial statement of assets and liabilities, receipts and expenditures, where you feel that is required, so that they monitor compliance and prohibit receipt or transfer of funds or other property by a foundation. You feel that is necessary, that the previous provision of just an expenditure was not enough and the concern of the Ontario Liberal Party is the disclosure of the information that would name names probably or sources of revenue that they feel should be kept confidential.

2:30 p.m.

Mr. Epp: Mr. Chairman, in fairness, I think the witnesses here felt that the recommendation in number 14 had been put forth by the first commissioners and that they no longer supported that, as I understand it.

Mrs. Sullivan: I think that is right. I do not think that there is a consensus that this is an appropriate recommendation now.

Mr. Epp: Oh, good. I see. I am sorry.

Mr. Maddaugh: In fairness, I think that is exactly what should be brought out since the auditors, way back when this was first brought in, given the other financial reporting sections in the various bits of information receiving here, noticed immediately that in the foundation sense it was different. It was deficient in the sense of information that you have to monitor, starting out without any experience under the act at all.

Now we are looking at it six or seven years down the piece, having had the experience behind us. I would agree, but I think the consensus on this one may well not have been the same concern that there was initially. The initial concern was the technical one from the auditing staff with regard to sufficient information to monitor potential abuse there which, in history as it has unfolded, has not occurred.

Mr. Chairman: Are there any other amendments here that you do not agree with?

Mrs. Stevenson: I do not think we have the power to speak for the whole commission because they have all been duly passed by the commission.

Mrs. Sullivan: This is a consolidation of the amendments. Most of the ones which are here are the ones that we have spoken to this morning and are ones the commission would agree to. There was one that Mr. Lane spoke to this morning concerning the constituency association time limits for election, fund raising and so on. That amendment, as it is presented here, only relates to the central political party. I think the consensus of the commission now would be that it should relate to the constituency association as well.

Mr. Mancini: Or the disclosures?

Mrs. Sullivan: Or the disclosures, yes. But that is not a part of the act really. It does not just say the candidate has to disclose.

Mrs. Stevenson: No, except the candidate's expense account could be--

Mr. Eichmanis: Excuse me, just for clarification here. When you say you do not agree with that particular amendment, you are not speaking for the commission as a whole, you are speaking as individuals or--

Mrs. Stevenson: All these amendments have been passed by the commission.

Mr. Maddaugh: Absolutely.

Mr. Eichmanis: I see.

Mr. Maddaugh: The commission, as it is constituted from time to time, has recommended these amendments. But I think it is fair to point out that three of those amendments, namely, the one we have just been looking at, the one we just discussed on section 42 about financial reporting, time period, time versus purpose test and the one on cheques, on subsidies, that are made out jointly to the chief financial officer and the candidate himself, were ones that were initiated by the very first commission in 1976, without any real experience under the act and how it might work.

Now that we have had six or seven years under the act, we have found perhaps that our views have changed. Those questions, in fairness, have not been put to the new commission as is constituted. The group sitting here, from a feeling of sitting with the commission month in and month out, have a view of what that consensus may well be if the question was reput to them.

Mr. Eichmanis: Oh, I see. I was under the impression that these consolidated amendments were what the commission had passed at its last sitting, and that is not the case.

Mr. Maddaugh: No. They are a consolidation. Some of them were passed in 1976, many were passed last year and a few this year.

Mr. Epp: Mr. Chairman, with regard to that, would there be any advantage to us to have the commission review some of those amendments that have been put forward by the commission as far back as six or seven years and to give us an update on their present feelings about that, or just to leave them the way they are?

Mr. Chairman: Yes, that makes sense, unless you can do that today by getting it on the record.

Mr. Epp: But the commission, as I understand it, did not meet prior to today to put forth a--

Mr. Chairman: They come from the commission as a whole.

Mr. Epp: Yes. I am talking about the commission as opposed to the views they are expressing today. I am just wondering how you feel about asking them to give us a present position on these various things, including, for instance, number 14, which, I gather, they are not in support of, based on their comments today. Would that be advantageous?

Mr. Chairman: That would be very helpful. How often does the commission meet?

Mr. Maddaugh: I think we would welcome that invitation, sir, because, as you know, with the difficulties we have had over the past few months without a formal chairman and the transition period, our minds have not been directed to this sort of thing. It has frankly been a good year or so since we have put our minds to amendments and your invitation makes a lot of sense in the circumstances.

Mr. Breaugh: I have a few areas I would like to pursue with you just a bit. The first thing I want to say is that my experience with the commission has been limited to phone calls about this, that or the other thing. I must say your reputation is rather remarkable, given that the act itself can be very stringent and the threats are for real. Everybody I have talked to who has dealt with the commission found people friendly, reasonable and attempting to help somebody out there conform to an act.

I take it a number of people in riding associations are having some difficulty conforming. Is the act itself too stringent? In other words, there seems to be a bit of difference between what you read on paper, what the act is all about, and the actual practice. In practice there seems to be a good deal of assistance now offered to riding associations. As Mrs. Sullivan said at the beginning today, if you have a fault, maybe it is because you are too lenient.

Should there be some rewriting of the act, in other words, to soften it up a little bit, or would we be better off simply to leave it as it is? My concern, and I guess the concern of people to whom I talk to would be, if you decided to get mean at some point in time, or get tough, or go by the letter of the law, there would certainly be some problems.

Mrs. Sullivan: I think the act is working well and it should work well in its present form. Our guidelines may be a little bit complicated and we might be able to review our guidelines. I think to put the difficulties into perspective, Mr. Dobson can give some statistical detail about how many ridings do get into trouble and what their sorts of problems are.

Mr. Dobson: Thank you, Mr. Chairman. I would welcome the brief moment to take occasion at this forum in answering your query, Mr. Breaugh, to submit to you the very clear reality that we experience day to day in the office that the objectives of the act by its original intent have been met, by and large--the disclosure feature, the public funding, the participation by the masses, if you will, with the tax credit involvement, the openness and cleanliness of Ontario political life in financial terms and on and on.

It would be perhaps appropriate at this wee moment to have you aware, and perhaps you already are, of the vast participation that the volunteer force makes to the success of the act. In my own view, without that voluntary participation, primarily as chief financial officers, the act would not have met those objectives nearly as well if at all as indeed the experience submits.

Having said that, we would ask that you feel free to relay that in a complimentary way to your volunteers. Many of you I recognize in this forum have had the same chief financial officer through your own candidate's campaigns and your own associations since 1975. Others have had some changes. There is a little bit of fluid to it but not nearly as much as one might presume with the potentials that the act does hold in a punitive way if it was called upon to task.

In an illustrative way, I might merely make reference to a recent filing requirement which would be audit reports supported financial statements for the calendar year 1981, acknowledging that it was a broken period because of the election campaign obviously. Here we have the willing volunteer who has diligently applied himself or herself to the filing and audit report support of a candidate's campaign period financial statement. At the same time, or approximately so, or at least by September 19, on behalf of the association, the same willing volunteer has diligently applied himself to that style of filing.

Then by May 31 of this year, 1982, for the broken or remaining part of 1981 is an annual return that was due to be filed, audit reports, including a statement of worth, assets and liabilities. That is really quite a task for the volunteer to perform, and really you must hear that they have just done an extraordinarily good job with it and you are to hear that from those of us kind of in the trenches, if you will. My colleague, Ed Allen, behind me here and ourselves, we are by the phones and we attempt to deal with the situations as they come along.

2:40 p.m.

In a concrete, illustrative way, may I say, one might expect after two financial filing necessities and the rigours of the campaign, our hearts go out to those who go through this gesture voluntarily. Even in situations where in a campaign their candidate has finished a poor third, they are still on the scene doing the job.

Of 415 constituency associations that are registered, hence the necessity of a filing of an annual basis by May 31, 340 or 82 per cent filed on time with a full and complete set of documentation appropriately attested, subscribed to, audit reports supported, receipt enclosures attached, addendum of schedules of enclosures to be in support of the return. There is more to it than just light filing, I agree, but there is the 18 per cent that perhaps need the kind of attention and care with all kinds of assistance from party headquarters.

Apart from the language of the law which determines under section 1 that we are to be administratively helpful to assist party associations and candidates, that suggests to me very clearly that the job is being done. We would then apply our resources, when we are acquainted with them, to be helpful to these people. At every occasion that presents itself, we try very hard to indicate to the willing volunteer that the manual or guideline binder that we send out to them or is transferred from the former chief financial officer to the new one is not to be overwhelming or overpowering.

It is not to be read or memorized or to intimidate them, but rather in its indexed fashion would hopefully set forth by reference material--hence the term guideline--to be helpful to them in any given set of circumstances that may crop up year in and year out or during the candidacy. I think with really a few exceptions, and we are trying very hard with those exceptions to be helpful to them and when we are acquainted with that, we would, with the co-operation of their auditor, get the job done.

I think, by and large, the job is really being done most effectively and most adequately. Our preoccupation from time to time may be with the 18 per cent but ring that up against the overall performance and I think it is a credit to you, as members, to your organizations and indeed to the public of Ontario who voluntarily get themselves involved in the process without compensation, for the most part, just because they want to do it. Mr. Breaugh, if Mr. Nayman and ourselves could be helpful to you and your good people there, whether it be an evening or a Saturday--

Mr. Breaugh: You have kept me out of jail so far and I appreciate it.

Mr. Dobson: I am not really speaking on behalf of the commission. I am staff, of course, but I know the clarity of the direction and attitude from our commission from its inception to and including the present members of the commission is to be as fulfilling to that objective as we possibly can. At no time are we out to try to finger somebody for a dilatory performance or for noncompliance. I would not suggest that my vision is 20/20 for the future, but as far ahead as I can see with our present commissioners, by the nature of their appointment, that attitude bears results and will continue. That is a long answer but I tried.

Mr. Breaugh: Let me try to pursue some other avenues that have been suggested both here and outside of this committee as areas where, I think in part, you are caught on your reputation as being a group that has functioned successfully, has done some work that all of us think is useful, worth while and done it in a manner which is very practical. You try to help people out.

There are a number of areas that have been suggested to the committee outside your jurisdiction now. I realize that you may have a little difficulty and I would appreciate it if you would just give personal feelings, if you could, of some of the things that have been suggested to us.

The Liberal Party in its presentation, and others, has suggested areas or things which happened during the course of an election which are kind of outside of everybody's jurisdiction, kind of fouls. The one they mentioned was the Dovercourt situation where someone was running, using their party's logo and their party's name. They were able to go to court and get an injunction but nothing could be done to stop that from happening.

I wonder would the commission be happy with, and see it as a practical thing to be considered, that kind of a problem so that in the middle of an election there is an agency that you could turn to that does not have all of the complications of the judicial process to resolve a problem like that. I think one of the things that is difficult now is that when you set up a commission that is geared to contributions and expenses, that is a rather simple task, but if you begin to expand the jurisdiction of that commission you may be complicating life to a degree where you cannot really do anything very well.

I want to try it on for size. Do you think that yours would be an appropriate commission to kind of have around as an appeal during an election process, someone you could turn to if there was that kind of a problem or a similar one that came up?

Mr. Chairman: That is normally the returning officer now, is it not? Does not the returning officer administer the Election Act?

Mrs. Sullivan: The situation experienced was quite a different one, where a party had to get an injunction against an individual who was purporting to be a candidate of that party. It seems to me, personally, that that sort of a problem could best be dealt with under the registration aspect of the Election Act rather than our commission. That is not to say that our commission could not be given that job and do it well, but it just seems to me that that is a more appropriate way because that is where the basic registration as a candidate, apart from the financial aspects, lays.

Mr. Breaugh: Do you see a problem in trying to expand the scope of the commission? This is the first thing I would like to know.

Mrs. Sullivan: I do not see a problem with that. There were several other suggestions that were raised yesterday and one of them was redistribution.

Mr. Maddough: That was all we had as an example.

Mr. Breaugh: That is right.

Mrs. Sullivan: Pensions were at one point offered to the commission to review and then they went into another body. The commission was quite open to look at that situation and felt, frankly, that it would go very nicely with the indemnity review. As for redistribution, that would fit nicely into the sort of thing that we are doing now. We are still basically talking about numbers of electors in each area. It is quite apparent to us that this could also go under the Election Act.

Mr. Breaugh: There are a variety of issues like that.

Mrs. Sullivan: The commission does have one advantage in comparison, say, to officials under the Election Act--it is an all-party commission. That is where, I think, if you want a nonpartisan, sort of compromise approach, that is when you use the commission. If you want a different sort of approach that tends to be more judicial in nature, that is when you would use another body.

Mr. Breaugh: I think what we have here is a commission setup that all of us are pretty happy with and see it as being a fair and reasonable place to take your problems if you have any and be generally happy with the result of it. So there is a range of things. Redistribution would be another major one.

It was suggested by Jim Renwick yesterday that it is something that is going to happen, that we would like to see happen in a forum where all of the major parties are represented, where it can be done in an objective manner and come back in with a report subsequently that everybody can deal with. You would be relatively happy with things like that and you think you could handle that.

What about the concept of limits, where two of the parties anyway have asked for some limiting factor on expenditures, whether that is an overall financial cap or you simply take current restrictions on advertising on a time period and say in addition to the time period we would like to see some kind of limits placed on the amount to be spent in advertising? Is that also the kind of thing you would like to take a look at?

Mrs. Sullivan: Members of the commission have discussed that before. We have not done any reports on the full concept of limited spending. We have discussed it informally after meetings but at no time has it ever been on our agenda. There is a feeling among certain members of the commission that spending limits are appropriate and workable because they have worked in other jurisdictions, and there are a number of advantages in looking at what has happened in other jurisdictions to make recommendations.

2:50 p.m.

The commission has never made policy recommendations. I would not be surprised if expenditure limits might be one they would be willing to make. I suspect there is close to a consensus on the

commission that there could be a reasonable amount specified or a reasonable formula that could be put into effect that would be agreed upon by all the parties and would be practical in all parts of the province.

When this act was written, there was a very different philosophy to that of the federal act. From what I understand, both from campaigning federally and from political representatives who have been involved with the enforcement of the federal act and the application of the federal act, it has worked well and there have not been many complications with it.

I do not think that is something that can come in over night. There would have to be a lot of discussion and party representation about what is a reasonable campaign. In Algoma, for instance, you run a very different kind of a campaign with different resources than you do in the city of Toronto, Burlington, Peterborough or Waterloo. There are different aspects of volunteer involvement and different kinds of expenditures that are applicable in each of those areas. I think those things would have to be worked out well in advance, with agreement, before a reasonable formula at the provincial level could be worked out. In terms of applying it, sure, the commission could do it.

Mr. Breaugh: The commission is in the unique position of being able to monitor what has happened--how much money is going out there, what is a reasonable expenditure for political campaigns. There is an immense variation, in looking over just the status from the last one, in the cost of an election. It varies from Jack Stokes, who is the lowest, at just over \$6,000 to Larry Grossman, who is the highest at somewhere over \$90,000 or \$130,000 or whatever the number might be.

There is an immense difference in the amounts there, and it does not even fit geography. Many have argued that it is more expensive to campaign in the north, yet in the largest single riding that we have got, we find the cheapest winning campaign. There are a lot of variables at work there.

I would be happy if the committee would at least consider that area. I am not sure, quite frankly, whether I am happier with an overall cap or whether I am happier with a restriction on advertising. In many places in Ontario, for example, if you gave somebody a limit of \$20,000 for advertising I do not know how you would spend it.

Mrs. Sullivan: That is the situation in most ridings. Most ridings spend very little money on advertising.

Mr. Breaugh: In mine, there is no single media source which will reach my constituency so there are bits and pieces to be fitted in.

You are now involved in the matter of members' pay for a variety of reasons which we do not need to go into. Are you reasonably happy that that is a suitable thing for your commission to do? I have read the studies here that are comparing indemnities for members in various Legislatures. That seems, at least from my point of view, to have worked out reasonably well. I am not happy with the results.

Mr. Chairman: Another frugal recommendation. Take it away from them.

Mr. Breaugh: Where is this extravagance when we need it? Does that fit in with the work of the commission reasonably well?

Mrs. Sullivan: I think it does.

Mr. Breaugh: And you have no problem in continuing with that?

Mrs. Sullivan: No.

Mr. Charlton: I have an additional question in that area. Has there been any frustration in the commission itself about the government's willingness to accept the commission's recommendation in that area?

Mrs. Sullivan: Do you mean unwillingness?

Mr. Charlton: Unwillingness.

Mrs. Sullivan: As you know from sitting here on an all-party committee, when we go through discussions, we come in with fully researched documentation on members' allowances and so on. Some of you know I wrote a minority report one year. We go through full argumentation. I will not say it is politically based but some people come from a different philosophical viewpoint than others.

The recommendations of the commission in relation to salaries and indemnities are basically the best compromise we can make. The compromise is based on a number of reasons. First, there are statistical analyses of what is happening to other people in the community and where we place the member in relation to other people in the community. Is the member comparable to a fireman, a teacher or to a high school principal?

Mr. Chairman: A bus driver.

Mrs. Sullivan: It is in terms of the work they do. A major basis of the argument is a lot of the philosophy put forward by the Camp commission. In particular, they relied on one quote from New Zealand which said that a member should be able to maintain two residences, and if that were necessary then the member ought to be able to have additional accoutrements as the cost of doing his work. The member should not suffer, should not have to work for free and so on. Those basic philosophies are taken for granted.

The other major part of the deliberations is a comparison with what happens to members in other jurisdictions and how they are compensated for the sort of work they do. We have done a couple of surveys--

Mr. Mancini: A study of all of them.

Mrs. Sullivan: All of them. Those are taken into consideration. I would like to give you some explicit examples. One of the people on the subcommittee feels very strongly that our members should be paid no more than they are in any other jurisdiction because their jobs are comparable whether they are in Quebec, Ontario, Prince Edward Island or Alberta. Ontario members do not do any more than anybody else does, so that is a major criterion.

Interjection: Does he want to follow us around for a week?

Mrs. Sullivan: Another member feels strongly that members should be compensated for the extra work they do and for the extra problems they have in maintaining their families and homes. My view is that a member should be compensated at least as well as the executive director of our own commission is, which is substantially higher now than the average member.

However, there is universal agreement by members of the subcommittee on indemnities, that the time has come to eliminate the tax-free allowance. Everything the members get should be taxable. That is something we will be looking at. Also, I think we are starting to reach a consensus whereby a consistent formula could be applied and where we do not have to get into all of these personal views about how a person should be compensated. But we will reach a level and it will be automatic, based on a formula. That is what we would like to get to.

Anna can speak to a great extent about the source of the research and the background that has gone into the deliberations.

Mr. Rotenberg: I would like to pick up on one point before you do and that was the last point about eliminating the tax-free allowances. I think there was a sort of gasp around the table.

Mr. Treleaven: A supplementary before he starts.

Mr. Rotenberg: No, the point is this. The federal Income Tax Act allows that up to half of your indemnity can be half of your income tax-free allowance, which we do not claim for the tax. If you took that away, in effect we could charge all of our expenses under the Income Tax Act. As you know, we all have a lot of expenses. If we go to a dinner, there is no charity receipt, the extra mileage; so many times we put our hands in our pockets--

Mr. Chairman: And there is nothing there.

3 p.m.

Mr. Rotenberg: There is nothing there. The effort that an elected representative would have to go through to keep track of receipts and all that sort of thing--You may come up with a little more or less expenses. Maybe some people are gaining by it and maybe some people are losing by it.

Mrs. Sullivan: When I say to take away the tax-free allowance, I am not saying not to give you the money that would make up for that.

Mr. Rotenberg: No. You are saying we should get \$15,000 and pay tax on it, instead of getting \$10,000 tax-free. Is that what you are trying to say?

Mrs. Sullivan: The view of the members of the commission at this point in our deliberations is that the tax-free allowance is not understood by people in the community. They do not get a tax-free allowance and they do not understand why the members should.

Mr. Rotenberg: In my opinion, the purpose of the tax-free allowance is, instead of having to put in a three-page list of all of the money which I had to pay out to earn my salary if it was not tax-free--If you eliminated the tax-free allowance, you would not eliminate my right to then put in receipts for my expenses and deduct that from my legislative income.

Mrs. Sullivan: I think we would like to see some receipts for expenses, yes.

Mr. J. M. Johnson: Would it be immaterial if you received \$15,000, paid tax on it or received \$10,000--

Mr. Rotenberg: It depends who you are--

Mr. J. M. Johnson: --but you would have the advantage that it would apply towards your pension.

Mrs. Sullivan: Exactly, and that is a very major concern. That is right.

Mr. J. M. Johnson: May I just ask one question for clarification? Did you say one of the members of your commission suggested that a member in any legislature had the same amount of work? You mentioned Prince Edward Island?

Mrs. Sullivan: That they have the same amount of work, no, that is not what they are saying. Relatively speaking, our members should not be overpaid in relation to other legislators.

Mr. J. M. Johnson: I think that particular member should visit Prince Edward Island to see the work load they have. My riding is practically the size of Prince Edward Island and they have two members for each jurisdiction and 28 members. Their work load is about one tenth.

Mr. Lane: I wonder if a good way to resolve this problem would be to have the Prime Minister of Canada sit on the commission so we could have some relationship to the backbenchers at the federal level.

Mr. Chairman: I would rather have the Premier of Quebec on the commission.

Mr. Rotenberg: Just give us indexed pensions. We will stick everybody on it.

Mr. Chairman: Mr. Mancini was asking a question. Go ahead.

Mr. Mancini: I think I will defer my question.

Mrs. Stevenson: I do not think I have more. All of you got a copy of this book?

Mr. Chairman: Yes.

Mrs. Stevenson: Our sources of resource material is listed. It is a study we spent, I guess, about 16 months preparing. We interviewed a lot of members. I do not whether any of you were among those interviewed.

Mr. Epp: I sure like the colour of it.

Mr. Chairman: Mauve.

Mr. Rotenberg: As if we are bleeding.

Mr. Mancini: Yes. I would just like to say that I was actually quite pleased initially when the commission was given the responsibility of independently reviewing the members' salaries. However, I stopped paying attention to the commission and the issue almost altogether, as to what you were doing regarding research for these salaries. I think it was your first report where you hired a consulting firm. I do not know how many thousands of dollars they were paid--

Mrs. Stevenson: We did not ever hire a consulting firm.

Mr. Mancini: No? Who did?

Mrs. Stevenson: Never. We have done it all ourselves because I have been around the whole time.

Mr. Mancini: What consulting firm said this is--

Mrs. Stevenson: It was Hickling-Johnston Limited which did it for the federal government.

Mr. Mancini: No, no. They did MPPs.

Mrs. Stevenson: Not for us.

Mr. Mancini: Hickling-Johnston wrote a report that said MPPs were semi-professional.

Mrs. Stevenson: That is right. That was before we came on board.

Mr. Mancini: Oh, that was before. Geez, and all these years I have blamed you guys.

Mrs. Stevenson: Oh, no, sir. Our first report that came out whenever--what year was it?

Mrs. Sullivan: In 1976.

Mrs. Stevenson: In 1976, that was the first time we were--

Mr. Mancini: A thousand apologies and salaams.

Mrs. Stevenson: That is okay.

Mr. Breaugh: It was the Board of Internal Economy that commissioned that other one.

Mr. Mancini: Yes, but anyway somebody from the Ontario Legislature or an agency of the government or the clerk's office or somebody got Hickling-Johnston--

Mr. Breaugh: The Board of Internal Economy.

Mr. Mancini: Okay. The Board of Internal Economy got Hickling-Johnston to do a report, which stated that MPPs were semi-professional and further stated we were comparable to long-distance truck drivers and we should be paid as such.

Mrs. Stevenson: Mr. Mancini, if you read this, we make no reference at all to the Hickling-Johnston report because I thought it was garbage.

Mr. Mancini: Yes? I am on bended knee asking for forgiveness. For all these years I held it against you. It is just not fair.

Mr. Lane: The last time he was on bended knee was when he was proposing to the girl he was going out with and they got married.

Mrs. Stevenson: At my age I am flattered. Mr. Mancini, I think probably for the next two years, if all the rumours one hears are correct, we will not have much to do with this.

Mr. Mancini: Yes, that is correct.

Mr. Breaugh: Everybody assumes we are making every bit as much as the federal members make, so we get blamed for that. I have to break the news to my kids that I am making less than a skilled tradesman in General Motors. So you do not have much chance to resolve that one.

There is one other area that I wanted to deal with. In theory, your commission reports directly to the Legislature. In fact, this is the first time we have ever seen you, which may explain why all those proposed amendments have not gone anywhere and why the checkoff thing, strongly recommended and supported by everybody, never happened. A number of us were quite sure why it disappeared. Would it be useful to try to recommend that your annual report gets tabled and automatically referred to a committee of the Legislature, perhaps this one, so that there could be an annual review of changes that might be proposed or problems that are occurring or some means of hooking the Legislature itself, that is, ordinary members like the ones on this committee, a little more directly in with the election expenses commission?

Would that be a useful process, not that it has to be a big deal every year, but perhaps there ought to be one formal hearing like this every year or every two years whereby the commission can report directly to members of the Legislature and vice versa. Would that be a useful exercise?

Mr. Maddaugh: My comment there would be the current structure of reporting to the Speaker is obviously to maintain the posture of neutrality that the commission wants given the subject matter of the appeals. Any arrangement that could infringe upon that type of posture would be cosmetic in terms of reporting to a particular ministry or what have you. That is the guiding feature. But anything short of that that encouraged some quick look at some of the recommendations and action and that sort of thing would be welcome.

Mr. Breaugh: What I am trying to get at here is that there is an air of the unreal about it when one states that the commission reports directly to the Legislature when in fact most members of the Legislature have never seen you and do not have any contact with you except in emergency situations. I am trying to provide some mechanism. When you do a major report and it gets tabled in the House, it very often sits there.

We hope the members read it, but we know that there has not been a whole lot of action taken on most of those recommendations. It seems rather ridiculous that we have you doing all that work, preparing those reports with a lot of good material in it, preparing amendments to the act itself and nothing ever happens to them. So maybe if we could do a little more direct hook-up we might provide the vehicle whereby things do occur from time to time.

Mr. Chairman: It is interesting with just the one position, that of the Premier of Ontario. With the responsibilities, the duties, the pressure and the agonizing that person has to put up with, he is making a basic indemnity of \$31,900. Is that correct?

Mrs. Sullivan: He is making \$31,800.

Mr. Chairman: He would get the same expense allowance?

Mrs. Sullivan: \$10,600.

Mr. Chairman: What is that worth in real terms?

Mrs. Sullivan: It depends on his total income at the end. For him it would be probably \$15,000 or \$20,000.

Mr. Chairman: We will stick to the actual. What is it, \$10,600.

Mrs. Stevenson: Then he gets a leader's allowance of \$6 -free.

Mr. Chairman: And then he gets an extra ministerial salary of \$33,200. Has that gone up? Can you think of anything else?

Mrs. Sullivan: That is it. The car and driver.

Mr. Edighoffer: Fuel for the jet.

Mr. Breaugh: Can I book it for Tuesday morning?

Mr. Chairman: So it is \$81,600. He has to be worth \$100,000 if he is worth a nickel.

Mr. Breaugh: I know guys who would do that job for half that.

Mr. Rotenberg: A person managing a corporation this big in the private sector has got to be worth about \$200,000 with job security.

Mr. Chairman: The only person who is really getting paid what he is worth is the Premier of New Brunswick who is getting a basic indemnity of \$21,980, expense allowance of \$8,792--more than the Premier of Quebec--and he makes more than the Prime Minister's allotment. He makes more than the Premier of Ontario. He gets \$33,267.

Whether or not he has another \$6,000 on top of that I do not know. He is administering the affairs of under a million people in that small little province down east compared to nearly nine million people in this great big province in the middle, eight and half million. I just wonder how you rationalize that sort of thing outside the fact that those boys must have sittings at night where they pass these motions to indemnify the members of the Legislature etc. He has a jet too, only an eight-seater.

Mr. Epp: I sometimes find it strange, Mr. Chairman, in looking at comparisons for the premiers often appointing people to positions of \$60,000, \$70,000 or \$80,000. I do not know what the president of Hydro gets or the chairman of Hydro, but they really must be up there.

Mr. Chairman: The chairman of the liquor control board.

Mr. Epp: And some of them may even be higher than what he is getting himself. The deputy minister is around \$70,000 and I think that is extremely unfair where the Premier is getting something less than somebody who is heading a corporation like Hydro or something else.

Mr. Chairman: Remo, are you through with your questions?

Mr. Mancini: I have no questions.

Mr. Chairman: Did we flog this pay issue enough for you?

Mr. Mancini: I think so. All I did during the pay issue was apologize for having complained about something that they had not done.

Mr. Breaugh: We are accustomed to it.

Mr. Edighoffer: Mr. Breaugh, in talking about other areas of the commission might want to consider, I think there was been fair discussion, or there was yesterday, regarding advertising by government during election campaign periods. Has this matter ever been brought to the attention of this commission? Have they ever discussed it? Do they feel it is under their jurisdiction or could be?

Mrs. Sullivan: In the last campaign, two or three complaints were addressed to the commission and one just around the period of the writ. Two of them specifically referred to the preserve it, conserve it campaign. It was discussed at some length at the commission, and there was a request for a motion of censor. That motion was defeated. It has been raised. The question as to whether or not our act applied was also raised. It was felt by the majority of people who voted against it that our act did not apply and it probably does not despite whatever personal feelings existed amongst people on the commission.

That is largely why it was defeated. There have been a couple of other instances where government advertising has been raised. I think it was raised at the very beginning of the commission in the 1975 campaign. It seems to me there was a rent control ad or something that was raised at the commission, and the commission, at that time, did make a motion of censor.

Mr. Edighoffer: What sections of the act did you look under considering that it may come under your jurisdiction? Were there any sections there?

Mr. Maddaugh: Yes. You might say that when the issue first came up in the earlier election with regard to rent review legislation and government advertising in that regard prior to and during an election, we looked at the question, and the legal opinion was that the act did not apply to the government. Unlike the federal act which in its advertising provisions includes government and similar agencies as part of the people prohibited, our act does not include a government in terms of the advertising limitations during a campaign period.

From a legal point of view, the opinion was clear that this act just simply did not apply to government advertising. But apart from that, the commission has some views about the political implications of making such moves, and so on and so forth. From the strict legal point of view, under the advertising restriction sections of the act, it simply was not applicable to government advertising.

Mr. Chairman: But these are basically something like the question of ceilings. These are policy decisions that the commission is really not involved with.

Mr. Rotenberg: The question is should the commission be involved?

Mr. Maddaugh: If the act were written so that it did apply, obviously we would be involved.

Mr. Rotenberg: That is not the question. My question is in the commission's opinion, should the commission be involved.

Mrs. Stevenson: I think right now that the commission feels that our duty is to administer this act.

Mr. Chairman: That is right.

Mrs. Stevenson: So that is as far as it extends until we are given authority.

Mr. Rotenberg: The question really is, does the commission, in its opinion collectively, think that the commission's mandate should be expanded to include some of these other things?

Mrs. Stevenson: We have never taken a vote on it so I do not think we can speak to it.

Mr. Chairman: No. That is one of the things you would informally discuss.

Mr. J. M. Johnson: May I ask one question?

Mr. Edighoffer: Maybe we should include the word "government" under section 23.(1) "Where any person, corporation or trade union with the knowledge" etc. so that would show the government has made a contribution to a political party.

Mrs. Sullivan: That was put forward.

Mr. Maddaugh: There was a section you may want to bring in the ambit too--

Mr. J. M. Johnson: Did you mention that the federal legislation includes--

Mr. Maddaugh: Yes. In the federal advertising provisions there is a definition of the people whom they catch within it, to include government agencies and government bodies as well.

Mr. J. M. Johnson: Have you any idea of how it is working and all that?

Mr. Maddaugh: No, I do not.

Mr. Lane: Just a couple of comments, Mr. Chairman. I have had the same chief financial officer for a number of years and he has always told me that you people are just great people and when he is in doubt, he just gets on the telephone and somebody helps him with the problem. After seeing and hearing you today, I would have to agree with him. We have great people like Mr. Breaugh. I think it would be kind of nice if we could see him more often and maybe get a little more of a relationship between the government and the people who are looking after our needs.

In any case, are there any CFOs who are paid to your knowledge? Are they hired?

Mr. Dobson: I do not know any who are actually hired, as such, by some type of a negotiated arrangement. There are a few who, by the determination of either the campaign committee on the candidate's side, if you will, or, indeed, by an executive decision by the constituency association, are paid or given an honorarium. Figures do come to my mind, having observed the returns, Mr. Lane, of \$200 to \$400, determined, doubtless to say, by the volume of activity that has been involved and some feeling perhaps for the time expended in so doing.

Mr. Rotenberg: You are talking about 22 cents an hour.

Mr. Dobson: Perhaps in a volume campaign, if at times, because of the volunteer and the way in which he has gone about his duty. I would only have to guess, Mr. Lane, as to how many experiences we have observed. I think if I were to say during the candidate's campaign filings if we had observed a dozen or 15--Ed, would that be a fair?--at the most out of 436 candidates, perhaps a dozen or 15 is a fair approximation.

Mr. Lane: I am just curious. I personally have a great guy. He has to contain himself to a wheelchair and crutches because of a serious accident 10 years or so ago. He is enjoying the job.

Mr. Dobson: Yes. We were to find that out one day when Mr. Tom Riching--I had occasion to call him. He is a fine gentleman. This would be in the background of some of the comments I made earlier--and I shall not repeat them for time's sake--made a wee suggestion towards expeditiousness, and I said it with a good heart instead of perhaps thinking with my head, if he would take a little junket that afternoon to the post office, or wherever, and he reminded me--not reminded me; I did not know and he knew I did not know--he was a paraplegic.

3:20 p.m.

Mr. Lane: Anyway, the thing that came to my mind, assuming we got someone in there by accident whom you people could not work with or did not do a good job, how do you get rid of him? He is a volunteer.

Mr. Dobson: It would be by your appointment or your association's appointment that he was there, Mr. Lane.

Mr. Lane: Would you people take any part in saying, "By golly, this fellow seems to be hard to deal with. You have to have a look at him." What happens? I do not suppose it ever does happen.

Mr. Dobson: Indeed, sir, it has happened. There have been no more than three or four occasions at the most when we felt, in the interests of the overall, that it really was not a good situation. We found it prudent, in keeping again with the act and our attitudes for the overall, to perhaps have a conversation with you, the member, or, indeed, if there was not a member in that association, with the association president, urging for the image locally of the party involved, for the objective of their future, namely, the next election and, indeed, for the image of their party

as locally viewed, it would be perhaps expedient to do what could be done to give this fellow a hand or maybe even give some consideration towards a replacement. Going that far only happened in a couple of instances.

Mr. Lane: I just wondered. It is easy enough to get rid of a paid employee, but a volunteer is something different, is it not?

Mr. Dobson: It is, sir, yes.

Mr. Rotenberg: I changed mine twice in the last year or year and a half with no problems. Their problem would be not having the time to do it.

Mr. Lane: But I am talking about inefficiency. If the guy is not efficient, then how do you get rid of him?

Mr. Rotenberg: That is not a problem.

Mr. Dobson: You have a good one now, Mr. Rotenberg. I do not know what you did to accomplish that, but you have a dandy now.

Mr. Rotenberg: My auditor or my CFO are you talking about?

Mr. Dobson: Both really, right now.

Mr. Rotenberg: I had some minor problems with one of the--

Mr. Lane: I cannot get my guy even to take his own expenses hardly. I have to pretty nearly embarrass him into making sure that he is getting paid for the stamps and stuff.

Mr. Dobson: We are back to the graciousness and the effectiveness of a--

Mr. Lane: He just loves doing the job, so I have no problem. How do you deal with it if the problem ever were there?

Mr. Watson: My question really ties in here with the same thing. Someplace there is a suggestion which has been put out--I do not know whether it is from you or from the returning officer--that the official agent and the chief financial officer be the same person.

Mr. Dobson: Yes, sir.

Mr. Watson: Is that your suggestion or is that somebody else's suggestion?

Mr. Dobson: Perhaps it would be our suggestion, Mr. Watson. It is not in a written or in a formal way, but our act makes no reference to official agent as such, and under the old Election Act the term "official agent" very often pursued or fulfilled the duties and obligations of a chief financial officer.

One can perhaps think under the Election Act of a duty or two that an official agent may pursue that is nonfinancial. He or she

may be certain that the 100 or more names on your nomination papers are indeed valid voters in Chatham-Kent. He may take that upon himself. It could be someone else, obviously, but he may do that.

Most of the duties of the former official agent under the Election Act are really taken care of by the CFO under this act.

Mr. Maddaugh: My recollection is that under the proposed Election Act amendment, the official agent concept will be dropped.

Mr. Dobson: That is my understanding, Mr. Maddaugh.

Mr. Maddaugh: It will be replaced completely with the CFO.

Mr. Watson: There was some confusion because--and I am fairly new at this--I know one of the things that our official agent did was to sign the slips for the people to get into the polls and things of that nature--and I think maybe the lists, or filed the nomination papers--

Mr. Dobson: Nomination papers.

Mr. Watson: --things like that of a nonfinancial nature the official agent did. The CFO was, of course, purely financial and we were bothered a little bit by the suggestion that they had to be the same person. I could see the two separate jobs and I just wondered what your reasoning was.

Mr. Dobson: There is nothing in law about it. We would be inclined, when asked, to make the suggestion that the chief financial officer be the one who completely controls the financial activity and, by the determination of the campaign committee, who did these other jobs of necessary duty could proceed at your option and whim.

Mr. Watson: So there is no real objection as long as the present legislation states that there be two different people.

Mr. Dobson: That is right.

Mr. Chairman: Mr. Epp wanted to ask a question. Is there anyone else?

Mr. Rotenberg: This may just be an aside, but I would indicate that I have had some minor administrative problems in my riding association which was nobody's fault, just a matter of timing and so on, and I just wanted to go on record while these people were here that the staff of the commission has been, I would say, more co-operative than one would expect from a government or semigovernmental body.

I am really very pleased with the way the staff of the commission have dealt with the various people who have worked on behalf of my riding association. It was better than one sometimes expects, and I thought that should be put on the record while the commission members were here.

Mr. Chairman: I missed some of the discussion this morning. I was just wondering, particularly in relation to the Liberal Party's submission regarding the situation where a constituency treasury may be in a debit position and in many cases they have gone to the bank and signed a note and borrowed money to carry on their operations pending a fund-raising drive of some kind. The submission is that that is illegal under the Election Finances Reform Act. Is that correct?

Mr. Maddaugh: If I may, Mr. Chairman, since the drafting of the act we have always recognized a potential problem in the loan area. As you know, contributions to a candidate are limited under the act. By the same token, loans are permitted to be guaranteed by third parties. The situation arises that if there is a default on a loan, the third party may well be called upon to guarantee and pay off that loan and it may well involve an amount in excess of contribution limits under the act.

That was always perceived from day one as a bit of an anomaly which could lead to possible abuse, i.e., entering into an arrangement where you knew you were not going to repay and allow the guarantor to come through and repay and thus contribute to your campaign in excess of the permissible limits.

Mr. Chairman: Or take over the constituency.

Interjections.

Mr. Rotenberg: Foreclose. That amount would not be receiptable.

Mr. Maddaugh: That is right, that would not be receiptable for tax purposes, there is no question about it. But more to the point is, is it contrary to the act?

From a banker's point of view, and I have indeed had calls from bankers asking, "Is this guarantee that we enter into illegal? If he is ever called upon to pay, he may well claim as a defence that he does not have to pay because it is an illegal payment under the Election Finances Reform Act." So from various points of view, there was an ambiguous area here at best.

We pointed that out from day one and, to be frank, when we discussed possible amendments at various stages along the way at the commission, the attitude was basically that we had not met a problem in this area yet--and indeed that is a fact, we have not had a practical case of that yet--therefore, let us deal with it when a problem actually arises.

So it is a problem of a potential that we have always recognized but we have never recommended a formal amendment to cure it. Frankly, that is where it stands. We recognize it as a potential problem, as a drafting defect perhaps in the act, but the commission has never formally recommended an amendment to deal directly with it.

Mr. Chairman: You heard the comments yesterday regarding financing of municipal campaigns. I do not know if that question was asked this morning or not. Is that also illegal under the act, transferring moneys from a constituency or candidate's fund to support a municipal candidate?

Mr. Maddaugh: No. The one thing the act has always been silent on was expenditures, save in the area of advertising in which there are certain limits which have to be adhered to in a campaign. There is nothing vis-à-vis a restriction on expenditures by a candidate or a constituency association.

Indeed, we have often pondered the point of what happens if a candidate takes his money and spends it on a nice trip to Hawaii, or what have you. From the point of view of our act, that is really a matter between the contributor to his campaign and the offending candidate. He may well have to face legal action from a contributor, but this commission under this act had nothing to do with that particular behaviour.

3:30 p.m.

Quite apart from that, what a constituency association or a candidate spends his funds on is basically outside the ambit of this act, but in certain areas, because we knew it was a matter of interest, the commission has chosen to monitor the situation. On your example of municipal campaign contributions, this commission has monitored the expenditures from year to year by candidates and constituency associations, and perhaps parties, although I do not think there were any examples, on contributions to municipal campaigns. We have a record of that and from time to time have so informed the people to whom we report at the Legislature.

Where our jurisdiction comes in, of course, is contributions. What the act permits is contributions to political purposes of the constituency association or the candidate. If one came in and said, "I want to specifically contribute to the so-and-so municipal campaign through you," we would say, "No, you cannot do that."

You can accept contributions for the general purposes of the party, for the purposes of an election here in Ontario at the provincial level; that is permissible. At that level it can be monitored, but obviously, as we immediately see, that is very easy to skirt in terms of a general contribution, which then in turn is very specifically expended on a municipal campaign or some other purpose that is not contemplated by the act.

From a strictly legal point of view, our view is, and has been from day one, that the act, except in advertising and certain limited areas, does not control expenditures and that the expenditure on municipal campaigns that has taken place from time to time is permissible under the act as it now reads and we have simply maintained a monitoring function on that activity today.

Mr. Mancini: I was discussing this yesterday morning and I could not figure out how the riding associations could get the money

to the individual candidate running in the local election. Mr. Breaugh was kind enough to say that in some cases the riding associations call a general meeting and duly pass a motion and have this money transferred.

In the private bill I introduced in the House I created a specific section which would disallow that. I am not a lawyer but I still feel there is room in the act for you to manoeuvre without that specific section because of the fact that the donations which you control and the tax credit, which is already stated as to how much you could receive, etc., is being used in a deceitful way.

In my view, just for that reason alone you should have authority under the way the act is written now to move in and to prohibit that.

Mr. Maddaugh: You are saying that a contributor who today gives \$100 to a constituency association--

Mr. Mancini: To the Mancini campaign or the Essex South--

Mr. Maddaugh: --for general purposes, fully expecting it to be used in a provincial campaign--

Mr. Mancini: And we filed a report with you saying that Essex South Liberals and the Mancini campaign have taken in this money and, really, there is no other reason for us to receive money, there is no other reason for a tax credit to be given, unless it is given to the association for political purposes, to promote our organization or the candidate's election or re-election.

Mr. Maddaugh: The point I am making as a point of law is that to attack that legally you would have to show, in the mind of the recipient at the time that contribution was made, that he had intended to spend it on municipal contributions and not for the general purposes of the party. As a matter of proof, that is very difficult to prove.

Mr. Rotenberg: It is to the benefit of the Essex South Liberal Party, to the benefit of your next election, that the mayor of whatever municipality be one of your strong supporters. Therefore, by contributing to his campaign the riding association makes a conscious decision, "I am going to contribute to Mr. Jones' campaign for mayor of whatever municipality it is, because when he is mayor he is going to help me get re-elected and therefore it is a valid expense of the provincial association."

That is an argument that could be made. I do not necessarily agree with it but that is the argument that could be made.

Mr. Mancini: But that is deceitful and it is in contravention of the act. The act is giving the contributor a very generous tax credit to get himself involved in only provincial elections.

Mr. Rotenberg: It is not just for elections; it is for all activities.

What you really want to say, I think, is there should be something in the act which might say, "Moneys received can be spent only for the benefit of the candidate" or "for the benefit or for the purposes of the riding association." That would cover both.

Mr. Mancini: Mr. Rotenberg, you have raised a very important point, and a point that has always been difficult in the act. The act allows the acceptance of contributions for the purposes of the constituency association. What are those? Are those a narrowly defined spectrum that deal with the election of people to the Ontario Legislature, or are they a much broader spectrum, being anything of any community interest to that constituency association? That is a question that, frankly, we have never tackled head on.

Mr. Rotenberg: That is on the income side, but there is nothing in the act on the expenditure side. I think what Remo is getting at--and there may be a valid point for it--is that maybe there should be, either in legislation, regulations or guidelines, as to what a constituency association may spend its money on.

Mr. Mancini: It may be. You are saying that it is not yet dead.

Mr. Rotenberg: If your commission feels there should be an investigation into that end of it, you should also be ruling on expenses as well as on contributions. Do you think there is a role for the commission in that situation?

Mrs. Sullivan: We have been monitoring all contributions to the municipal campaigns, and we have details on those which are quite extensive.

There are two points of view about the spirit of the act. One area that came up before the commission was where more than one riding association wanted to do fund-raising for purposes of assisting the boat people's campaign. At that point, we weren't about to have a meeting, and the commission members were requested to present a written opinion on that.

The argumentation of the commission members related to political purposes. It was felt that unless an association were almost degenerate in its viewpoint, that was not a legitimate political purpose under our act and therefore would not qualify for a tax benefit. The other side of it was that the money was being specifically raised for that purpose.

The argumentation on the municipal campaign side is that a major part of the second tier of the provincial government, if you like, is formed of members who have had experience at the municipal level. That is a legitimate political training ground and perhaps a legitimate political activity within those associations. A lot of you here in this room have sat on municipal councils or have been mayors or something. That is the one argument.

The other argument, as we have always said, is that this act should be only for provincial activities and for provincial

elections, and that is where it should lie. In that case, we would have to be intermonetary in a more serious way than we are now. Now we record every contribution that is made to the municipal candidates, and the leaders of the three parties in the Legislature are informed of the extent of those contributions after each commission meeting.

We do have for you, if you want it, a documentation of all of the contributions that have been made. From the inception of the commission, there have been \$88,000 in contributions given to municipal candidates. Two of those have been from Conservative associations early on, four have been from Communist associations, and 23 have been from NDP associations. We are not at this point making a judgement as to the validity of those contributions.

Interjections.

Mr. Mancini: I just want to make a point that in some riding associations you do not need a general meeting to have permission to spend moneys, whereas Mike informed me yesterday that other riding associations have to call general meetings. So people can give money during the election campaign for their provincial candidate, and then the executive can use that money for another purpose. I think that is raising money in a deceitful manner and we should not allow that.

3:40 p.m.

Mrs. Sullivan: All of these funds have come from the association funds, not from the candidates' funds.

Mr. Mancini: Yes, but after the election there is just a big transfer over.

Mrs. Sullivan: Yes, that is true.

Mr. Rotenberg: The general point I was trying to make is that in the act now you control contributions, you monitor expenses. Is it the commission's opinion that there should be more control over expenditures, not just on the basis of municipal campaigns? There are a number of things now that a riding association cannot spend money on and which some people may not deem to be for political purposes. You can monitor them, but you cannot do anything about them because my understanding is you have no control unless it is something blatant.

Do you feel the legislation should be changed to give you control over expenditures and that there should be guidelines or a list of those things on which moneys can only be spent? Do you think it should be within your jurisdiction to make sure that happens? Or do you think it should be left wide open that expenditures are really up to the discretion of the riding association?

Mrs. Sullivan: I think if there were a change in the act we would administer it, but we are not pumping for a change in the act if that is what you are asking.

Mr. Rotenberg: Does the commission have a recommendation to us as to whether we should consider that kind of change?

Mr. Maddaugh: It is a very complicated subject. There are many philosophies involved in the control of political financing. Some acts, as you know, control the contribution end of it as our act does. This is the model we follow. Other acts, like the federal act, control the spending side of the equation.

We have heard suggestions today that perhaps our act is sufficiently far along with experience that we can get more sophisticated and try a little bit of both the contribution and the spending side. But every time we get into that area, we see all sorts of problems and considerations that have to be brought into play. It is just not a simple yes or no question. It is one that will require extensive study and consideration.

Mr. Epp: Mr. Chairman, I have two questions. One is a supplementary to this and the other is a new question. The supplementary is: To what extent can you prevent people from spending some of that money? I know that political organizations, riding associations, under the present lenient interpretation of the act can give money to candidates. What happens if that association were to be Essex South and were to give money to a municipal candidate in Kenora? Could they do that?

Mr. Maddaugh: Yes.

Mr. Epp: Could they give money to somebody in Manitoba?

Mr. Maddaugh: Sure.

Mr. Epp: Any place in Canada?

Mr. Maddaugh: Sure.

Mr. Epp: Outside of Canada?

Mr. Maddaugh: But in doing so--

Mr. Epp: So they could do anything they wanted to in a sense? Even to the point of spending it outside the country?

Mr. Maddaugh: That is right. There are limits on supporting a federal candidate, but I am not saying that such action would not expose themselves to action from the actual contributor who has said, "Hey, I gave you money for this purpose and you have spent it on something in Manitoba absolutely remote from this." I am not saying for a moment that you would not be exposed to a lawsuit there.

Mr. Epp: So they could do it locally too. At any point now somebody could say: "Look, X association is spending money on a municipal campaign. I do not condone it. They did not come back to me as a member of the association so I am going to take them to court on it." They could do that?

Mr. Chairman: If you can trace the money.

Mr. Epp: It is there. They have at least 20 plus associations that have done it.

Mr. Dobson: It would perhaps be worthy of mentioning, Mr. Chairman, that all expenditures in excess of \$100 by display and revelation are built into the support filing of a financial statement. It immediately gives rise to the age-old checks and balances that does seem to permeate political life generally. The interested public and the media are forever in our office looking over the financial statements. As a matter of interest, and validly so, opposing political interests are forever looking us over.

One could also perhaps say there would be a time when the spending body would have to account for their actions by appealing for further moneys for their treasury. All these features, doubtless to say, have some considerable bearing in shipping money out willy-nilly to Manitoba or South America or wherever. There are these features of revelation that are always there and then there are these built-in checks and balances. Do not overlook the fact that we have to go back to the well to fatten up the kitty a little bit too.

Mr. Watson: Could I have a supplementary on that? In one of the answers you gave, you said except a federal candidate. My understanding is there are associations that represent both the provincial and the federal. Is there a conflict there? Is there any problem with that?

Mr. Maddaugh: We have guidelines that require them to keep their affairs fairly separate and record them separately.

Mr. Dobson: Yes, sir, indeed we do. They may by name and by identity federally and provincially commingle. However, in the reporting syndrome under this act, and I think it has all been accomplished now, there has been a strenuous urging, as Mr. Maddaugh has mentioned, to have separate books and records for our constituency association, completely separate reporting entities. That has eliminated the confusion in that regard. It could be the same officers by name and address and mileage locally, but for the reporting scene it is different money and different bank accounts. It is a separate reporting format entirely.

Mr. Chairman: Different overdrafts.

Mr. Epp: The other question I have, Mr. Chairman, is somewhat directed to you and to the committee, as well as to the witnesses before us. It has to do with what happens after we terminate the discussions today. For instance, ordinarily the witnesses will go back and they will discuss again among themselves some of the 20-odd recommendations--how many there are--that they made and they are going to review some of the ones that backdate to maybe five or six years. This particular report that we decide on will go to the Legislature and it will be debated there.

In addition to that, there have been a lot of other recommendations made. For instance, the New Democratic Party and the Liberal Party yesterday made a number of recommendations. What I am asking you, as well as members of the committee and as well as witnesses, is what is going to happen now? Is the commission going

to go back and look at all the recommendations that were made and break them down and see what you can start incorporating? Is the government going to tap some of that and see what can be formalized into legislation, or are we going to have a debate in the Legislature and that is going to be it?

Mr. Chairman: I hope we would try to clarify the points that were made to us before today, get opinions from the members of the commission and things of that nature. They are going to bring this consolidation of recommendations up to date and I am sure they will be influenced to some extent by the opinions that have been expressed here, either by ourselves or people that made submissions.

I think the important thing is to realize that the main function of the people appearing before us today is to administer an act, a piece of legislation. They are to suggest improvements, for the most part, whether they are mechanical improvements or make the intent of the act clear. They are trying to make the act more workable, close loopholes, if you will, things of that nature. I do not think we should ask them to get involved in some policy decisions such as whether there should be limit on expenditures by a candidate. I think they want that recommendation from us, not in reverse.

Mr. Epp: I know what you are saying, Mr. Chairman, and I do not have difficulty agreeing with you, except the commission is dealing with these problems on a day-to-day basis and we do not have the problems of 400 plus associations directed to us. The staff, particularly, is in the firing line, and then the staff brings it to the commission members themselves. Although I understand their position from a legal standpoint, they are in a stronger position to make a lot of those recommendations than we are.

3:50 p.m.

I am not for a moment suggesting that they are usurping our position. They are not if they come forward with certain recommendations. What I am saying is that I do not want to go away from here and have them say, "Well, the committee never asked us specifically to look at this. Therefore we do not have the right to look at it." That is my point.

Mr. Chairman: Let us fill that vacuum by updating their report. They are proposing amendments?

Mr. Epp: But there are things that came up today and yesterday that are not in that report, Mr. Chairman, and I get very frustrated when you go through a series of hearings and nothing happens afterwards. It is not only here, it is in other committees or groups or wherever you are. People go away and say, "Well, that was a great discussion, but what is happening?"

Mr. Charlton: We are in fact in a position as a committee to make any recommendations we wish to.

Mr. Chairman: That is right. We do not have to rely entirely on the opinion of the commission. For the most part, in having the commission here today, basically the request is, "What would you recommend be done by the Legislature to improve the election--what was it again?"

Mr. Epp: Election Finances Reform Act.

Mr. Chairman: Yes, to update it and improve it. A lot of the points that were raised in your party's submission yesterday touched on points of that nature, which I think we should try to clarify. It is a great opportunity, having the submissions of two parties yesterday. We should follow up and possibly get their opinion on these submissions, which I think would be very helpful.

Mrs. Stevenson: Mr. Chairman, I can assure you that if the committee needed the commission's advice on any matter, dealt with as a commission, the commission would be more than happy to accommodate you. But we cannot speak for the commission.

Mr. Epp: Let me carry that one step further. Are there some things that you are looking for direction on at the moment as a result of the discussions that have gone on yesterday and today on this matter? One of the things we spoke about earlier was the specific recommendations that you came forward with. Some of them are somewhat outdated. Are there other things on which you would be looking for some direction on from this committee? You must have had some discussion or expectation before you came before the committee that you are looking for some kind of direction or whatever.

Mrs. Stevenson: We were all sort of told to come.

Mr. Epp: And that was it?

Mr. Maddaugh: I think it is fair to say that our concerns are basically expressed in the amendments we proposed. Some of those amendments are perhaps a little long in the tooth, and given the history of time, they have not proved to be the problem we thought they might be before experience, and we may wish to revise some of those. But they are very minor in number.

Mr. Charlton: We can recommend to the House. It is the House that can direct the commission.

Mr. Chairman: Okay. Are there any other questions?

Mr. Lane: I wish to go back to the discussion that seems to have come up several times today about whether or not you people should have some concern about how each riding association or each candidate spends money over and above the election situation.

I personally would not like to see tight regulations put on that aspect of it. It is something similar to ourselves as legislators saying that we are going to control the municipalities and how they spend their money. In riding associations, especially in northern Ontario, apart from an election that happens every three or four years, there is not much to live for really.

It is a long way from any place, and they have to travel long miles to get together, and it is very hard to hold a riding association together, when we have got 200 miles to come together in some central spot. If they have to come together knowing that someone is saying, "You have got some money in there, but you can only do certain things with it," then it is going to be more difficult than ever to keep those people interested.

I think it would be very discouraging if suddenly there are tight rules as to what we can or cannot do. Hopefully, they are all responsible people. If they break the law very much, or you people have concern, you are going to get back to them or get back to the CFO and say this maybe should be looked at.

I would like to think we are going to give them some latitude to work on because, especially in the north, it is very difficult to generate too much enthusiasm except at election time, and of course that does not go for a very strong association. I hope that we do not get into that.

Mr. Charlton: Just on that topic, though, and perhaps to make one thing perfectly clear, I think it was mentioned a number of times that the federal act does deal with the questions of expenditure. It should be pointed out that the federal act's limits on expenditures are all directed at federal campaigns. The federal act does not restrict federal riding associations and their spending practices.

Mr. Lane: Anyway, I would just like to think we would not ever get too awfully serious about that unless, at some point, it gets to be a real problem.

Mr. Epp: I know what you are saying, John, but I have difficulty with that too. If somebody seriously abuses the act by spending money--the example has come up of the candidate going to Hawaii or whatever--I know somebody who has donated money to the campaign has the right to take that person to court. But generally the public then looks with disfavour on the legislators and says, "Look, this thing has been discussed. You knew there was a great loophole there and yet you did not do anything about it." Not only is the particular person who has abused that trust being blamed for it, but all legislators are blamed for not having taken some action.

I am not looking for a lot of stringent regulations, but I think there should be some kind of guidelines with respect to expenditures which prevent a serious abuse. If there is a serious abuse, then certainly we have covered ourselves by it. There is some happy medium in there because I find it a difficulty.

Mr. Chairman: Herb, do you not feel that the publicity resulting from something like that, particularly in that member's own riding, would be a sufficient enough check and balance to discourage that sort of thing? I can see the man being defeated at the ballot box in the next election, for example. I would think his own executive would take a dim view of that, unless they were silly enough to pass a motion and record it, allowing him to do that.

These are things within a constituency, within an executive of a party. Even the provincial party would take a dim view of something like that. It is like somebody in a company who misuses company funds in some way. There are remedies available to that company and to the shareholders of that company.

Mr. Epp: When I first heard there were associations that were giving money to candidates running in municipal elections, I was somewhat astounded by the whole thing. This was a few years ago. I just could not believe how they, in conscience, could use money given to a provincial association and turn around and give it to somebody who was a municipal candidate. I was a municipal candidate on six different occasions and I raised my own.

Mr. Chairman: How did you make out?

Mr. Epp: I won every time and came in first, so I did not need that money. Some people feel they need it.

Mr. Chairman: Running at large, were you?

Mr. Epp: Running at large.

Mr. Lane: The time has come to stop that. We have to stop everybody from running at large.

Mr. Epp: The point I am trying to make is that most people have difference perceptions of what they should do. I was somewhat astounded by the fact that people were doing this, yet nothing has been done to close that particular loophole. There are some arguments in favour and opposed, as Mrs. Sullivan has indicated.

Mr. Chairman: What about giving the president of your young Liberal association \$100 to run for office within the association, for example.

Mr. Epp: Run for office within the association?

Mr. Chairman: Yes. Say he wanted to become president of the Ontario Young Liberal Association.

Mr. Epp: Within the provincial gambit?

Mr. Chairman: Yes.

Mr. Epp: Yes, I would go along with that because that is a provincial responsibility and a provincial office.

Mr. Chairman: But not for the federals.

Mr. Epp: No.

Mr. Chairman: That is interesting. I think the main thing here is disclosure. At least the commission knows this is going on and is monitoring it. But your point is you feel there should be some control on expenditures of that kind. Anybody else?

I just have a couple of points that were raised by Mr. Evans yesterday. As far as the point on Canadian subsidiaries of American companies being restricted by the parent company in the United States, that really does not concern you, does it?

Mr. Epp: No.

Mr. Chairman: Did we raise the point about candidates for leadership campaigns? That has been raised. We have talked about loans. Is there any comment on the tax receipting process? The point was that if tax credits were issued in the months of January and February in each year and were allowed to be used in the previous year's income tax return--is that something--

Mrs. Stevenson: With respect to that, I think he got it all wrong. The only reason they do that is that no one knows until the end of February, when they have their T-1 returns, what they can contribute to RRSPs.

Mr. Maddaugh: That is right. The RRSP is tied to the taxable income.

Mrs. Stevenson: That is right. So one thing has nothing to do with another. He was way off base on that one.

Mr. Chairman: Okay, are there any other questions.

Thank you very much for attending. We appreciate your information and your submission. You will be getting a copy of our report, naturally, but it would be very helpful--I do not know which is the cart and which is the horse here--to us if you updated your consolidation. That would be very helpful. Thank you very much.

So we will be meeting next Thursday morning at 9:30 to hear the Ontario Land Corp.

Mr. Charlton: Is that the only one we have got left?

Mr. Chairman: Yes.

Mr. Eichmanis: It is really the Ontario Mortgage Corp. in a new guise. The mortgage corporation merged with the land corporation.

The committee adjourned at 4:03 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS
AGENCY REVIEW: ONTARIO LAND CORPORATION
THURSDAY, SEPTEMBER 30, 1982



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breagh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
Mancini, R. (Essex South L)
McLean, A. K. (Simcoe East PC)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Also taking part:

Bennett, Hon. C. F., Minister of Municipal Affairs and Housing
Ottawa South PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher, Legislative Library

From the Ministry of Municipal Affairs and Housing:

Beattie, A., Director, Real Estate Wing, Ontario Land Corporation
Cornell, W., Deputy Minister
Goodman, S., Special Assistant to the Minister
Grant, R., Director, Marketing and Long Term Planning Branch
Haley, D., Director, Real Estate Wing, Ontario Land Corporation
Hignett, H. W., Chairman, Ontario Land Corporation
Riggs, R. W., Assistant Deputy Minister, Real Estate Wing; Chief
Executive Officer, Ontario Land Corporation

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, September 30, 1982

The committee met at 9:53 a.m. in room 228.

ONTARIO LAND CORPORATION

The Vice-Chairman: I call this meeting to order. We have a quorum. We are dealing this morning with the Ontario Land Corp. We have the pleasure of having with us the Minister of Municipal Affairs and Housing (Mr. Bennett), to whom the OLC reports. Mr. Minister, would you introduce those who are with you and indicate who is to make the initial presentation.

Hon. Mr. Bennett: Mr. Chairman, members of the committee, first of all, I would like to introduce to you the new Deputy Minister for Municipal Affairs and Housing, Ward Cornell. He is sitting to my left. Next to him is Herb Hignett, former president of the Canada Mortgage and Housing Corp. of some years past, and for the last eight years chairman of the Ontario Mortgage Corp. He is now chairman of both the Ontario Mortgage Corp. and the Ontario Land Corp. Sitting to my right is Bob Riggs, assistant deputy minister for the real estate wing in the ministry and vice-chairman and chief executive officer of the Ontario Land Corp.

A lot of these gentlemen are senior staff members of the Ontario Land Corp. whose day-to-day knowledge of the operations could prove useful to the committee members to better appreciate the past, the present and the future of the corporation. Because I wish to keep my comments brief and thereby allow members more opportunity to review the plans and strategies of the Ontario Land Corp., I will not spend a great deal of time reviewing the history of either the Ontario Mortgage Corp. or the Ontario Land Corp. Rather, I would like to spend a few moments on the present and future of the newly merged corporation and on some of the objectives that have been set for the long-term situation.

Each of you, I understand, has already received the researchers' report on the OMC and OLC. With some adjustments, I believe the report reflects the history of both corporations as well as some of the concerns that we both share. The decision to merge the OLC with the OMC was fundamentally a decision based on the larger ministry and government mandate to rationalize and streamline crown agency operations, while ensuring that we maintain an efficient delivery system to the public.

In keeping with that goal, the merger of the two corporations enabled us to bring together two major assets of this province. The mortgage and investment portfolio of the former OMC and the land, mortgage and leasing assets of the OLC. A second aspect which created an entity that would offer a viable means for repaying outstanding debt to both the provincial Treasury and, just as importantly, to Canada Mortgage and Housing Corp. within a specific time frame. I might add with respect to CMHC a plan has been developed and approved by the province and CMHC to do that.

Staff of OLC have renegotiated loan financing arrangements with our federal counterparts so that some 74 outstanding debenture and loan agreements have been consolidated into two agreements. The OLC has now established a debt retirement fund to repay the outstanding debenture of some \$112 million over the next 20 years.

While I am on this topic I might also point out that with regard to its obligations to the provincial Treasury the OLC staff have initiated meetings with representatives of Treasury and Economics and Management Board of Cabinet on a proposal that would see all--and I want to underline the word all--liability to the corporation repaid to the Treasury of Ontario over the next 20 years. At the same time this proposal would eliminate future borrowings from the Treasury after 1983.

While no financial decision has as yet been reached, I am confident that such a proposal will be approved. The ability of the corporation to develop and to initiate these proposals, as I said, comes about because of the merging of the two corporations and the subsequent ability to better apply those merged assets to meet long-term obligations. Perhaps the best way to review the long-term outlook for the new OLC is to refer to the goals and objectives of the corporation as outlined in its corporate plan.

The primary goal of the corporation is straightforward and clear. It is to realize the investments of the province of Ontario in mortgages, leases, lands and other assets held by the corporation. In other words, the corporation is embarking on a plan that will wind down operations and pay off all debts, but it will undertake this task in a business-like, consistent manner by ensuring that these assets can be put to their most appropriate use. This goal also means that in the immediate future the corporation will continue to develop and sell its residential, commercial and industrial lands either serviced or unserviced.

With regard to major land banks, a task force consisting of directors of the OLC was recently formed to develop an overall corporate position on individual disposition strategies for land banks. These strategies should be in place before the end of the current year. For this purpose, meetings have been held with the ministries, such as Agriculture and Food, Industry and Trade, Environment, Natural Resources and others, to explore future uses for these holdings. All of this is being done in our efforts to utilize the knowledge and resources of other government ministries and agencies in the private sector.

The corporation and the staff in place today are capable of responding to the changing nature of the market and today's needs. I have in mind, for example, the very successful Ontario rental construction loan program. Under this program, launched in January 1981, the province has provided some \$90 million in second mortgages to assist to help the construction of some 15,000 rental units in Ontario. The renter/buy program, launched on May 14 of the current year, is a stimulus in the home ownership market and a major vehicle for job creation for this winter. It is administered

by the staff and OLC. As of this date we have received more than 5,000 applications, and that could be just short of 6,000 applications, for the 15-year, interest-free loans. New applications are being received at the rate of approximately 90 per day.

10 a.m.

In summary, the Ontario Land Corp. has embarked on a strategy of realizing the investment in the province in the mortgages of leases, lands and other assets held by that corporation. The discussions that will take place this morning will, I am sure, demonstrate that the corporation and staff will meet that objective. Equally important, I believe, is the fact that OLC will undertake these initiatives in a way that works to the best interests of the citizens of Ontario.

We have spent a great deal of time over the last year or two in bringing together this amalgamation or merger of the two corporate sections and I am convinced, because of the effort of Mr. Riggs and some of his senior staff, that the arrangements we have made with CMHC in putting together some 74 original agreements into two will have a long-term, beneficial application for this province. They will be delighted to go into more detail on those 74, now amalgamated into two, as to how it was arranged, what the upsides and the downsides might be in relationship to them and what we see as the potential long-term saving both in administrative costs and management costs of those agreements.

Overall, I am confident as we move forward over the next period of time with the OLC and its board of directors that we will be able to rationalize the disposing of some of the lands that we have held for a fairly lengthy period of time. It will be unrealistic for this committee or for this government or for the public to believe that all of the lands that are presently held by OLC will be disposed of.

The market is not such that it is advantageous to dispose of them, or indeed there is no potential for their development at this time. But I am sure that those lands that are properly located will be utilized by both the private sector and the public sector. I want to emphasize the public sector will include the provincial government and the municipal governments.

I hope as we go along to develop, promote and advance the Challenge 2000 program we announced back in mid-May of this year that some of the lands that are presently sitting without structures on them and owned by the crown will be made available to the development industry either in a partnership between OLC and the private sector or indeed in straight ownership by the private sector on a sale from the OLC.

Mr. Chairman, I have another engagement this morning but I trust that Mr. Hignett, the chairman of the board, and Mr. Riggs, the chief executive officer and assistant deputy minister in the Ministry of Municipal Affairs and Housing, along with their senior staff will be more than well prepared to answer whatever inquiries you might have relating to the subject you are dealing with this day.

Mr. Epp: I have a few questions. First of all, what do you see as the distinct advantages of merging the two corporations aside from OMC helping to subsidize OLC, which is considerably in default, or if not in default, certainly losing a great deal of taxpayers' money based on the investment.

Hon. Mr. Bennett: I think some of the strong points are the fact that the overall employee strength will be improved.

Mr. Epp: Just a moment. What do you mean by employee strength? Do you mean the capabilities of the OMC helping the OLC?

Hon. Mr. Bennett: The amalgamation of them.

Mr. Epp: So there was something wanting before as far as the capabilities--

Hon. Mr. Bennett: I would not want to say there was something wanting, but let me put it this way, Mr. Epp, that as some people retire and others move on to other areas of government, the need for replacing them I do not think is essential at this time because we have, to some degree, the same capabilities in employees that are either with the OLC or the OMC. We have staff that are now leaving because of retirement or whatever it might be. It is an effort to streamline the whole situation, to try to utilize manpower and their abilities.

To try to rationalize mortgages being held by one organization is not much different than the management and maintenance than it is by another crown corporation. Lands that were held by the OMC will be put under management direction by Mr. Hignett and his fellow directors and will operate just as effectively and efficiently, or maybe more so. Time will tell.

Mr. Epp: Those are the advantages. What are the disadvantages as you see it?

Hon. Mr. Bennett: I guess some people would say the disadvantage is the reduction of the amount of employment as far as the market is concerned in Ontario today. I do not see that as a disadvantage. I see that as a positive action. but I would say there are some who might consider that as a disadvantage in respect of the fact that in a time of unemployment in Ontario that this government or this ministry or these two crown organizations by going together would reduce the overall potential in the number of employees to run the corporation if it was maintained as two separate entities.

Mr. Epp: How much land do you hold now in the Ontario Land Corp. that was purchased by Mr. White and Mr. McKeough and so forth?

Hon. Mr. Bennett: I appreciate that you did not include me in the purchasing aspect of it. I inherited it.

Mr. Epp: No. You were opposed to it, as I understand it.

Hon. Mr. Bennett: I make no apologies for that. I said several times that I disputed it, but democracy rules and I guess will continue to rule in Ontario.

Mr. Epp: Being very much of a free enterpriser yourself, I would not think you would be in favour of the government taking over more of the private enterprise all the time.

Hon. Mr. Bennett: That is right. That is why I said to you a few minutes ago that--

Mr. Epp: Now I wonder why you are so reluctant to sell it off.

Hon. Mr. Bennett: No, I am not reluctant. Did you hear my remarks just a few moments ago?

Mr. Epp: I heard them, but they were couched in very safe terms.

Hon. Mr. Bennett: In very safe terms because we do not really--

Mr. Epp: When you read between all the gobbledegook, you find a picture of a very reluctant--

Hon. Mr. Bennett: It might be gobbledegook by your interpretation, but not by mine. I said to you very carefully and cautiously that I am not getting into a fire sale at this time. In other words, I am not going to have you or Mr. Charlton sit there five years from now and tell me, "You were damned fools because you sold it and now the market has improved and things are so much better and everyone is going to make a million off what the government did for them in selling off land at a fire sale price."

I also realize the flames can lick at me from both directions, but I would sooner have them licking at me from the front, so at least I can see what is coming. When they lick at me from behind, I am not quite sure when they are going to catch me.

Mr. Epp: We will come at you from the front.

Hon. Mr. Bennett: Well, that is what I am saying to you. I will hold the land until the timing and the price are right for the people of Ontario.

I would be criticized by you as well for the times we did not get into greater land banking. I do not say I mean you personally; I am referring to the philosophy of your political group. At times they have said we should have been into greater land banking. The third party will constantly tell me that, "You should have been in more land banking."

The other day I sat discussing some problems with the Housing and Urban Development Association of Canada and the Urban Development Institute. We were looking at difficulties in the marketplace today, difficulties of the government and the private

sector when they get into land. Let me tell you, it is interesting when they start to bare all the facts to you. Some of the major corporations--and I am not talking about one or two; I am talking about virtually every one of them--are being burnt with land speculation or land banking exactly the same as the government of this province.

Do not think that all the mistakes rest with government. If you look at the stock market and some of the analysis of their annual reports, you will find the private sector is in a hell of a mess.

Mr. Chairman: But they have to get rid of it.

Hon. Mr. Bennett: Mr. Chairman, they are not in any different a position than the government is. They can only get rid of it if there is a buyer and they can clear it at a price that is somewhat close to what they have got it financed for. The Cadillac Fairview Corp. Ltd. has said it is out of the residential business, but you have not yet seen them putting their land out in Mississauga on a fire sale. They will sell it when the price is right, and I do not blame them.

Mr. Chairman: It is for sale.

Hon. Mr. Bennett: It is for sale. The 68,000 or 70,000 acres of land held by the Ontario Land Corp. on behalf of the people of Ontario are for sale. I would not say all of it because some of it--our holdings in Townsend and in Pickering and a few other areas--will eventually go to the conservation authorities, because it happens to be ravine land and things of that nature. It would be rather foolish of us to go and sell it back to the private market and then find the conservation authorities have to buy it back from that second source. It would not make a great deal of sense.

Some of the lands for conservation purposes will be--when we can get the negotiations and the agreement put in place and proper financing--taken out of this asset and transferred into another public agency.

Mr. Epp: Having drawn the parallel with Cadillac Fairview, have you now got Greymac Mortgage Corp. rushing into the ministry to buy land of those 68,000 acres?

Hon. Mr. Bennett: Greymac is not buying land, Mr. Epp.

Mr. Epp: No, I know, but since Greymac is buying units from Cadillac Fairview, have you got the type of purchasers who are now coming to you to buy land from the Ontario Land Corp. or from the government of Ontario through the crown corporation?

Hon. Mr. Bennett: We have not had anybody coming in saying they would take all 70,000 acres, nor has Cadillac or anyone else.

Mr. Epp: Not even 1,000 acres or 2,000 acres?

Hon. Mr. Bennett: We do have 300 or 400 acres moving here and there. For an example, the Borden Farm in Ottawa was sold off to Minto Construction through a tender process. We did very well with that. I know there are some other lands down in the eastern Ontario area that have been sold off, maybe only 30, 40 or 50 lots at a time, but they are moving slowly but surely.

We are not running in to tell you we have to dump it tomorrow because we are not going to dump it unless we get the right price.

Mr. Epp: Having said you did very well with that, how much did you make?

Hon. Mr. Bennett: I have not got the exact figure. That will come later.

Mr. Epp: Based on interest rates, the last were 10 or 12 per cent.

Hon. Mr. Bennett: There are a lot of things. I have not got the figures with me, but they are taking into account a lot of issues before we decide whether we have or have not been able to do well for Ontario.

10:10 a.m.

Mr. Epp: In actual fact, you are saying you made a profit, let us say, based on interest rates of even 12 per cent on average, even if they are much higher in actual fact?

Hon. Mr. Bennett: Mr. Epp, I would like to think I could tell you that every deal we make would be as easy as, "You give me so much and we are finished." We find today that everyone who wants to make a deal with you wants to defer payments for a time. In the case of large purchases, so that it can be of no concern to anyone that there is a buyer's position being taken by the ministry or the staff of OLC in relationship to tender A versus B versus C versus D, we have used the private sector to do an analysis of the financing programs, the payments programs, the downpayment and how it relates to what we will get in the end.

In the case of Borden Farm in the Nepean, the difference between the two top bidders was about \$170,000 or \$190,000 to our good. I cannot tell you what the net position is overall. I do know my staff were convinced we were in a very positive plus position, which is what I am delighted to hear.

Mr. Epp: This land would be used for residential?

Hon. Mr. Bennett: A combination. There is some church property there, there is a small commercial property, and there are two schools. The balance will be used for single and row housing.

Mr. Epp: It is kind of a complete development, is it?

Hon. Mr. Bennett: Well, in this particular case, there is a piece of land in the northwest section of our holding, which was open for some time under the Veterans Land Act, which has never had a storm or sanitary sewer. Now we will be in a position where, with us being to the south and since the water table and so on runs to the south, we will be able to put the sewers to connect into the system that runs through the land that was originally owned by OLC.

Mr. Epp: You do not have to build a new sewer plant?

Hon. Mr. Bennett: That is something that is up to the municipality. To my knowledge they will not because they are right next to the Nepean creek. For storm water, a settling pond was built and agreed to some five or six years ago--you might recall that all hell was raised about it. The sewage treatment plant at Green Creek, built by the city back in the early--

Mr. Epp: The early 1960s when you were on council?

Hon. Mr. Bennett: Yes. That was back in about 1962 or 1964. Its capacity was measured against all the vacant lands inside the green belt area. To my knowledge, they do not require any further capacity to handle it.

Mr. Epp: When do you expect that the markets will improve to meet the kind of criteria you have drawn up so you can sell that land? I am talking about great portions of it, not pieces--

Hon. Mr. Bennett: Mr. Epp, if we see some very substantial reductions in the mortgage rate over the next period, we will see a rather strong market develop. It may be stronger than we can even project at this moment if mortgage rates move down below 14 per cent. From what I have heard, there is a strong possibility we could see it down.

Mr. Epp: Certainly after the American elections.

Hon. Mr. Bennett: I think there will be more things playing into the economics of the day than just the American elections. There is a lot of money that is sitting around in banks that has to be used. There is no sense paying interest on something you have not got out earning interest.

Mr. Chairman: Buy some more oil companies, or bail out oil companies.

Hon. Mr. Bennett: I thought the cartoon in today's Sun was very characteristic of the problem with Dome Petroleum, relating the domed stadium to the Dome oil company. It is well done.

Mr. Epp: I have not seen that. I am sorry I missed it.

Hon. Mr. Bennett: You should look at it. I think it is well done.

If mortgage rates move in a downward direction--I have no doubts that some governments in this country today, provincial governments that offered certain mortgage rate advantages, have really predicated the schemes that they are designing in relationship to a down pressure in the mortgage market, a down pressure in the interest rates--they will be able to get out of it for less money than they originally projected.

If what we heard this morning is true, that the market might be down another half point today, that has to be a pretty positive step in the direction I was talking about. If I was an economist and I was being paid for all my advice, it would be great. I am not. I am only trying to use the advice given to me by my staff and by the outside sources that I have talked to over the last number of months.

I tell you, just for your information, we will be meeting later on today with each of the construction organizations again to review with them some of the things they see happening.

Mr. Epp: Of course, we always see those mortgage schemes come up when there are probabilities or possibilities of provincial elections. We do not see those mortgage schemes coming up in those provinces where there is a majority government and where elections come up--

Hon. Mr. Bennett: The \$5,000 interest-free mortgage that we offered over a 10-year period repayable over the next five years really gives you interest-free money roughly for 12 1/2 years. Predicated on today's interest, let me tell you that is a great deal better than some of the plans being offered in western Canada. It is considerably better. Sit down and do the calculations some day and see what it really works out to.

I have to tell you that it is great that everybody has a scheme, but I only want to caution you that somebody is paying for it, the taxpayers of Ontario. I know we are under criticism by some that we should have extended into the resale market. The resale market could not project for us the visibility of new employment and new opportunities, and indeed there are other things that we looked at.

This government invested hundreds of millions of dollars in municipalities across the province that all wanted to advance their servicing to facilitate development. We paid hundreds of millions into an Ontario home assistance program to advance construction, whether it be east, west, north or south of this great metropolis known as Toronto. It is sitting there not being used, but you and I are paying the interest on it because we did not charge the interest, you will recall, to the municipalities for a period of time--five years.

Most of them have been extended for another period of time because nobody built on the lines, and as a result they cannot afford it because often there are no user fees coming in. We are in the situation where we have had to defer the interest. If we can do anything to stimulate some construction in the areas where

we have this heavy capital investment in the ground, it is both to the advantage of the province and the municipalities. That is why we went into new home renter/buy program, and it is working.

Mr. Epp: That raises something very interesting, Mr. Minister. I was told--and I suppose what you are saying now is that is untrue--is that it was going to be extended to the resale of homes until that story came out in the Star, at which time it had to be withdrawn and the budget was redrafted in order to not have a leak in the budget.

What you are saying now is that that is completely untrue, that the story in the Star, which quoted some very reliable sources, has no foundation and that you never really considered extending it to the resale--

Hon. Mr. Bennett: No, I do not think that ever was said.

Mr. Epp: What was not said?

Hon. Mr. Bennett: That we had never it given thought. When people were designing the developing programs we took in a number of scenarios. We looked at each one and tried to project the amount of employment it would produce, its value to the economy, the sales tax revenue it would produce, and so on. We went through them all and calculated what the actual cost to the Treasury of Ontario would be. As we went through them, because of the limitations in the amount of money that was going to be given to us, we looked at where the greatest advantages were and certain programs were eliminated.

I am not going to sit here this morning and tell you that we had not considered a number of alternatives to what we proposed to put in place. I would be wrong to tell you that.

Mr. Epp: What you are now saying is the fact that that was in the Star had no basis on the outcome and that there was no change from the time that Star article came out, or somewhere along that line, to the time the budget was made public.

Hon. Mr. Bennett: No. I give the reporters credit for being investigative, finding out whatever they can and using a little bit of imagination. But let me tell you the imagination, understanding and ability to figure things out do not start and stop at the press.

Mr. Epp: So in actual fact there was no more information given to the paper than was actually--

Hon. Mr. Bennett: I am not denying for a moment that we had gone through a number of scenarios and eventually had to make a presentation to the resource policy field of the cabinet that had some realism in relationship to the number of dollars we were told would be made available to us. In other words, we had to cut the cloth to match the pattern.

Mr. Epp: You indicated earlier the number of applications that are received each day--

Mr. Chairman: Any more questions?

Hon. Mr. Bennett: Mr. Chairman, could I be excused with my deputy? Mr. Hignett and Mr. Riggs, who have more depth in the whole situation than I intend to carry around in my head, will be delighted to stay and review with you in detail.

Mr. Chairman: Thank you, Mr. Minister. I want to get everybody's name straight. Mr. H. W. Hignett, you are in the middle, and then Mr. R. W. Riggs and Mrs. S. Goodman?

Mr. Riggs: This is Mr. Johansen to Mr. Hignett's left. Next to him is Mr. D. Kusel. I will introduce to the committee some of the other senior staff who will provide you with any information you require: Mr. Beattie, who is in charge of our land operation; Mr. Haley, who is in charge of our mortgage administration services; Mr. Grant, who is in charge of all marketing of lands held by the province; Mrs. Goodman, who is the minister's executive; and Mr. Hinds from my office.

Mr. Chairman: Thank you very much.

Mr. McLean: Mr. Chairman, I have a question. You say he is in charge of all the lands in the province. What about Government Services property? Is that altogether different?

Mr. Riggs: Yes, although Government Services manages the majority of lands held under farm leases that we hold at the present time, the lands in Cayuga and Cambridge which we hold in our land banks are managed by the Ministry of Government Services, together with the Ministry of Agriculture and Food under the farm lease program. All of these lands, or the majority--there may be the odd acre or so--are presently held under some form of farm lease program which is set up by the Ministry of Agriculture and Food. That is where MGS fits in. They also have other lands but these other holdings are not anywhere near as large as some 70,000 acres they administer on behalf of the province which are held by the Ontario Land Corp.

Mr. McLean: So they actually have a land bank of their own?

Mr. Riggs: I would not say that. I think their holdings are bits and pieces held over from the Ministry of Transportation and Communications sometimes, or things of that nature, or holdings with government-owned buildings. Most of the other large lands are held by the ministry, such as the Ministry of Natural Resources--all our parks, MTC large holdings for future highway developments and things of that nature. I would assume, outside of MNR, that we are probably the largest land holder of provincially owned land in the province.

Mr. Eichmanis: Mr. Chairman, may I have a supplementary on that? I take it that you rent the land that you have in some of these areas. Can you explain how you go about determining what the rent will be, and so on, and what portion of the land is so rented?

Mr. Riggs: I will refer to the land banks because that is where most of the farm leases are presently under administration. The rental level is set by the Ministry of Agriculture and Food and stays on a formula basis related to the price of corn, I believe. Am I right on that one?

Mr. Beattie: Type of land.

Mr. Riggs: Type of land, I am sorry. It is related to the type of land. Agricultural land is graded one, two, three and four. Depending on the type of land in the area, a price is set by the Ministry of Agriculture and Food. Up to this point, our efforts in choosing farmers to lease it have been on one of two bases: one, those farmers who come forward and want to lease it, who are established farmers, either adding to their present holdings to make their farms more economical in terms of production; or, second, new farmers who want to get into the business.

10:30 a.m.

The second aspect of this has been to tender them out. We have some concerns about a tender process because at the moment we are dealing with Agriculture and Food on the basis that these lands should be maintained, in many cases, in agriculture and that we want farmers not to mine them--and I use that term of taking out but not putting back in--and we want to set a criterion which allows the farmers to put back in on a longer-term lease basis until these lands are sold back to farmers, in some cases, or sold for other purposes. Agriculture and Food sets the criteria for the rental level, sets the criteria for what the farmer must do to maintain that farm, and it is monitored by them. Government Services administers those lands and issues the leases and we are the people who merely hold the land. That is how it works in theory.

Mr. Eichmanis: Does the rent come to you or MGS? Who does that go to?

Mr. Riggs: It comes to us indirectly. MGS handles all the accounts and we get the residual between what they pay out and what they get in. If it is a negative balance, we have to cover it. At the moment, just to clear the air on that, we are at a break-even point basically on all our lands. Our revenues are about equalling our expenditures, so it is a break-even proposition at the moment.

Mr. Eichmanis: What portion of the roughly 68,000 acres which you hold would be so rented?

Mr. Beattie: Basically all farm land is rented. The proportion which we do not rent, which would be 10 or 15 per cent--

Mr. Chairman: Would you come to the microphone, please? We want to have it on the record.

Mr. Beattie: Basically all the farm land that could be farmable is under a farm lease. The lands that we hold, which would be 10 or 15 per cent, that cannot be farmed consist of valley lands or where the slopes or soil conditions just make it impossible. For instance, some of our holdings in Sudbury would just be rock. The general answer to your question is that essentially all our farm land is farmed.

Mr. McLean: May I go on further from that, Mr. Chairman?

Mr. Chairman: Yes.

Mr. McLean: You are saying your revenues are about the same as what your costs are.

Mr. Riggs: At the present time, yes.

Mr. McLean: Are you including your administration, the staff, in that cost?

Mr. Riggs: No. The corporation has no staff. The ministry provides the staff and the ministry absorbs the cost of that staff. It is a deliberate policy not to load additional costs on the price of land when we eventually sell. We might as well absorb that cost now, rather than capitalizing those costs and increasing the book value of the land where we know in the future that some of these lands may have to be sold at a price less than our book. In fact, in agricultural land obviously there is going to be some reduction in value if we choose that course of action.

Mr. McLean: It was my understanding that the Ontario Land Corp. had just a little fewer than 100 employees. Is that correct?

Mr. Riggs: It was. That is correct. With the amalgamation, we are now a little fewer than 200 employees. That is being reviewed.

Mr. McLean: Do you at any time in the future foresee repaying the Treasury back what the cost of those properties were from the OLC?

Mr. Riggs: I have to answer that in a different way, Mr. Chairman. We owe the Treasurer approximately \$1,000,100,000, of which about half is drawing interest. We are paying interest on about half of it. The other half relates to purchases made by the Treasurer, mainly North Pickering, Townsend and Cayuga, and he is picking up the interest on those and writing it off yearly. We believe that we will pay back interest on half of that money and we will pay back \$1,000,100,000 in principal covering all the lands over the next 20 years.

Mr. Eichmanis: Obviously at some point in time you want to sell this land you are now renting. If it is leased, how long is a lease? Are you in a situation where you can sort of have flexibility where you say, "There is a buyer out there and he wants to have land, but it is leased and we cannot do anything about it"? How do you get around that kind of situation?

Mr. Riggs: One of the problems I had when I took over this particular portfolio about a year and a half ago was that there was a tendency to look at our land banks as a whole. When you look at 70,000-odd acres, it is very difficult to come up with a strategy and a policy to sell off 70,000 acres. It is a big chunk of land and if you sell it off all in one year, you are going to distort the land markets, agricultural-wise, commercial-wise and residential-wise, very badly in this province because it was purchased over 15 years. We are looking at individual land banks and we are looking at parts of individual land banks.

Let us take one land bank in Cayuga. I have had a number of meetings with the regional chairman and the mayor of Cayuga who have asked us to sell back that land to the farmers over a period of years. Our leases on the farm lease run from, I believe, three to five years. We are now beginning to develop a strategy at the end of three to five years on how we can best sell back those lands in Cayuga so they will be maintained in ownership of individual farmers and remain in agricultural production. That is one example.

With every land bank we own, we have to talk to other ministries. We talk to our municipalities, to the private sector, and certainly to conservation authorities, etc. In each case we are trying to parcel the land so that every public and private agency has an opportunity in the voice in the final strategy that will come forward to my minister and to Management Board of Cabinet for the sale of that particular parcel of land.

We may not sell the entire parcel in the land bank. In certain land banks we may hold back 500 acres which are on the edge of development. But the remainder in terms of the time horizon of any potential development may be deemed unnecessary. If that is the case, then we will find ways and means of innovative financing--I use that terminology, which the private sector enjoys--of selling the lands for those purposes which the government believes most appropriate, whether it be agriculture, whether it be new ways of energy production, of growing trees, and things of that nature. We are investigating all those items.

Mr. Chairman: For industrial waste sites?

Mr. Riggs: Yes. That is a very sensitive subject and certainly there has to be a better understanding of what that means in terms of the new kinds of industrial waste management. Most people still believe that you are dumping something in the middle of a field. This is not the case. Maybe I am being a bit critical, but that is my nature. Lands can be used for that purpose and we have many holdings that would be advantageous for that. But the public has to understand what the new concept of industrial waste management is all about. We are working with Environment on a number of good ideas, but we are telling them, "You have got to sell it first before you start putting those concepts on public lands."

Mr. McLean: At the present time are you selling any land?

Mr. Riggs: Yes. Our sales last year were about \$30 million.

Mr. McLean: But with the way the market is at the present time, why would you be interested in selling and at today's appraised value?

Mr. Chairman: To reduce some of the carrying costs for one thing.

Mr. Riggs: We have two types of land. We have land banks where we can sell off pieces of this land at book value or market value because people want them. Some of our land in North Pickering, which is adjacent to Markham and Scarborough, is extremely valuable. We also have land which is under active development. In the largest project, which is a federal-provincial project--the government owns 75 per cent of it and the province owns 25 per cent of it--we do 100 per cent of the work and we give 75 per cent of the profit to the federal government through the Canadian Mortgage and Housing Corp.

Our biggest project at the moment is Malvern. Malvern is in the northeast section of Scarborough. We have about 10,000 very valuable lots to go there yet on our development. These can be sold off even in the present-day soft market to developers at about \$900 to \$1,000 per lineal foot. We always sell at the low end of market. That is a government policy that we should do that and CMHC and the federal government concur that we should never lead the market, we should always be dragging behind to give the individual who wants to buy a house, where the province and the federal government have been involved in the financing of those lands, a bit of an edge. We find that the resultant sale prices are also at the low end of market.

We do have lands in London and Ottawa, as the minister mentioned, where the market is not as soft as in certain of the cities in Ontario at the present time. If builders wish to buy those lands, they will pay a reasonable price. We have a number of objectives. We are setting up proposals to pay off our two large debtors, CMHC and the province. In order to do that, we have to sell. We want to sell our development lands and we want to sell our land banks to some degree in order to make our payments.

10:40 a.m.

We have proposed a 20-year repayment schedule to the provincial government increasing in amount every year and we are setting certain goals for ourselves to do that. If we do not sell, our interest costs would kill us. That is the problem of any industry, whether it be the private industry or a manufacturing organization. You cannot keep the material on the shelf. We recognize that and that is why we have taken a very aggressive stance--and my minister has given me a lot of direction on this matter--to start getting strategies to move the lands out. We are quite prepared to take long-term deals on some of our lands, so

long as somebody else picks up the interest. That is the dividing line. That is why we are in the market for sale. As my minister said, all our lands are up for sale within reason. It is a matter of timing.

Mr. McLean: There is an interesting point there. You sell it at so much a foot--\$900 or \$1,000 a foot. You are selling to developers. What control have you got--probably none--over what those developers resell that land for and develop it and the profit they make?

Mr. Chairman: Are you worried about reselling or developing?

Mr. McLean: We are selling to a developer who, in turn, is developing and making a profit on what we are selling. I do not mind him making a profit, but what size of profit? There is no control there at all.

Mr. Riggs: There is no control.

Mr. Chairman: The marketplace will look after that.

Mr. Riggs: We are selling at the low end of market and we are making a profit.

Mr. J. M. Johnson: I have a supplementary on that same phase. Mr. Riggs, I am concerned in my riding with absentee foreign ownership, with land going out of control of Canadians and some of our local people. Do you people have any concern about this aspect?

Mr. Riggs: Yes.

Mr. J. M. Johnson: Do you have a guideline? Do you sell to offshore people?

Mr. Chairman: Offshore people? Do you mean Maritimers?

Mr. J. M. Johnson: Swiss bank accounts, numbered bank accounts. Do you have criteria that favour selling to Ontario residents, or at least Canadian residents?

Mr. Epp: Jack, you had better rephrase that because George Kerr is at Burlington and he is offshore there. It is just off Lake Ontario.

Mr. Riggs: Mr. Chairman, we are following government policies or directions about always selling land to Canadian residents. To the best of my knowledge to date, all the land that has been sold by the province or by the corporation has been sold to Canadian firms. I do not know of any exceptions at the moment. If we were going to sell a large tract of land to an offshore developer, we would have to get cabinet approval on it.

Mr. Charlton: On the same topic, the question of whether the Ontario Land Corp. should be selling land at market or less than market value is a philosophical, ideological and political

debate and I do not want to get you people into that debate. The policy is that your selling land at the low end of the market. Have you ever considered some kind of guarantees when you sell the land that it will remain at the low end of market, at least for the first sale after development?

Mr. Riggs: Mr. Chairman, that was really a political decision by both governments.

Mr. Chairman: I think the obvious question, though, is that if the land is developed and serviced and there is a housing unit on it, what do you do? Do you mean just keep the cost of the lot at a certain price?

Mr. Charlton: Yes. Do you not get involved in any kind of negotiation with the developer about the kind of development and the price ranges in which that development will fall when you are selling off the land?

Mr. Riggs: To some degree, Mr. Chairman, it is an academic discussion. The majority of our projects are in the moderate range neighbourhoods, and I have to say that. We are not in any of the upper-range neighbourhoods in any of our projects. We are in the east end in some cases. In looking at the sale prices, we do monitor them because we are concerned that they sell, because if they do not sell we take back a mortgage until the roof is on and we get our mortgage normally paid out on the first draw the builder gets from his mortgage company. Yes, we have a concern, but our terms of reference which had been laid down for us by both levels of government, federal and provincial, is that the market will probably in terms of the sale price of a lot build a house in keeping with that.

In the last three years that has been the case. The houses which have been built in Malvern are at the lower end of the market scale. There are very few houses in the higher scale in Malvern. It has been one of the bright lights of houses that people could afford to buy--\$69,000, \$75,000, \$79,000 and up, and less for the semi-detached in the last three to five years, in most of Metro. We certainly take a hard look at the plans that come in at us, but there is a direction and a policy that we not interfere in the market to that extent that you are suggesting and I am following that policy.

Mr. Charlton: You say you have a hard look at the plans when they come in. It is obviously some kind of a bidding process in terms of if you have more than one developer that is interested in a parcel of land.

Mr. Riggs: It used to be.

Mr. Charlton: Is it not any more?

Mr. Riggs: The market, with interest rates in 1981, has eliminated a lot of the smaller builders who would have speculated or picked up some lots. Now with the number of lots that we can produce in Malvern, we are fortunate enough to get four or five builders to pick up those lots. The market has changed, and until the interest rates turn around we will not be inundated with builders wanting land.

Mr. Charlton: I understand that. What I am trying to get at is the basic process. The present situation is obviously somewhat different to what you were confronted with four or five years ago and to what you may be confronted with two or three years from now. What I want to get at is, if you have a parcel of land that is particularly appropriate for development because of its location, in Malvern or wherever it happens to be, and you get two developers who are interested in developing that piece of land and they make proposals, how do you assess those proposals and how do you ultimately decide which developer is going to get that land? In other words, do you have a look at the nature of the housing or the nature of the development they are intending to provide and does that influence the decision? Would it just be totally a price-related decision in terms of the amount they were prepared to pay?

Mr. Riggs: It varies from project to project. Let us take Malvern a number of years ago. When we got a substantial number of builders we looked at the following criteria: certainly financial in terms of price; secondly, the kind of house and price of house he would build. Our criteria would give a rating for that kind of approach. We are concerned about his financial stability, because basically if a builder goes bankrupt, he creates problems for the purchaser and a problem for everyone. There are a number of criteria, and we would award on the basis of those criteria--number of points given for his house style, his house price, the price he paid and things of that nature.

There was a rating given for house price, house style, fitting in with the neighbourhood, good design and things of that nature, because we are building communities in a project the size of Malvern where presently we have 30,000 people living. We do take those aspects into consideration. Even today when we have fewer builders, we are still concerned with the municipality for good design, fitting in with the neighbourhood, the ability of the builder's financing and things of that nature.

Mr. Charlton: To make that a little bit more specific then, if you have a couple of proposals on a piece of land and you have checked out all of the issues, like basically the two developers are prepared to pay roughly the same price for the land and both of the developers check out in terms of their financial background and their stability, and if one of their proposals is for a sound development where the construction looks good and one price is substantially lower than the other. How would you opt in a case like that? Would you opt for the lower-priced development?

10:50 a.m.

Mr. Chairman: Are you talking about some form of architectural control?

Mr. Charlton: Not architectural control.

Mr. Chairman: You are talking about the design of a home or the material in the homes. How much do you want to get these people involved in that sort of thing?

Mr. Charlton: Have you been out in the new house market lately?

Mr. Chairman: Yes.

Mr. Charlton: Most of the designs are very similar whether they are in the lower-priced range or in the higher-priced range. The architecture and the design are very similar right across the marketplace.

Mr. Chairman: Not if there is a \$50,000 or \$60,000 difference in the price.

Mr. Charlton: I am not talking about a \$50,000 or a \$60,000 difference. I am talking about an \$8,000, \$10,000, or \$12,000 difference, and that can be substantial in terms of people's ability to buy and to mortgage.

Mr. Riggs: It is difficult to answer a hypothetical case. Let me tell you why. First of all a municipality has about 90 per cent control of what happens. They set the size of the lot to some degree. They also set what kind of house will go there. They set the landscape. They set the streetscape--

Mr. Chairman: The zoning.

Mr. Riggs: The zoning. So by the time the builder gets to what he is going to build he is locked in. Secondly, I guess we have never had your hypothetical case. Prices today come in within five or 10 per cent per square foot per cost. Because of the regulations imposed by the province, the National Building Code, the Ontario Building Code, the local buildings codes, there are very little differences to what you are talking about, particularly when you are starting with a lot cost of about \$20,000 and up and you are building a house at \$69,000 and up.

Mr. Epp: It is surprising that anybody builds at all.

Mr. Riggs: So the margins that we are seeing today, three years ago even, are very narrow on the projects that they build on lands financed by provincial and federal governments.

Mr. Charlton: I do not know if you familiar or not with the Mohawk Gardens redevelopment in Hamilton. Basically, one phase of that redevelopment went on about five years ago and the second phase is presently going on. The lot size, the style of housing and quality of housing were substantially different between phase 1 and phase 2. What kind of different approaches were taken when you looked at the proposals in a situation like the redevelopment of Mohawk Gardens?

Mr. Riggs: I will turn to one of my people who was here when that happened. I will ask Mr. Grant, who is in charge of marketing for Mohawk Gardens to answer your question, if I may.

Mr. Chairman: One of the reasons is it probably costs more to build the same house today.

Mr. Charlton: The houses that they are building now are much better than the ones that went in five years ago.

Mr. Grant: Mr. Chairman, in terms of Mohawk Gardens, we have two builders on phase 2 now. One is pretty well built out. The other one is still going on. When that came on the market, we did a tender call and looked for builders' proposals. A number of builders made propositions. The lot sizes are very small, as you know. I think they are 20 or 25 feet lot sizes.

Working on current market prices in Hamilton, we accepted bids. We knew that the builders in there had certain design concepts which they had to conform to because of everything else. What they tried to do was put the maximum house on those lots consistent with those things. I have been amazed when I have looked at Mohawk Gardens because I think there are some incredible values in there in terms of a housing unit.

Mr. Charlton: In the phase 2?

Mr. Grant: In the phase 2.

Mr. Charlton: I would not disagree with you on that. I am just trying to get at the basic difference in philosophy. What was the basic difference in outlook from the point of view of OLC between phase 1 and phase 2 because they are substantially different.

Mr. Grant: Phase 1 was a HOME project, if I remember. I think it was one of the last HOME projects. By phase 2 there was no more HOME projects, so it was up to the builders then to do what they could without that--

Mr. Charlton: So in phase 1 the ministry in fact had a fairly significant say in terms of lot sizes and the actual units that went on to those lots and that is no longer true?

Mr. Grant: That is no longer true.

Mr. Charlton: From the perspective, for example, of the existing residents in that community in Hamilton, I think most of the residents are much happier with the development in phase 2. There has been a fairly substantial number of complaints about the units that went in in phase 1. We are just trying to get at the difference in approach.

Mr. Grant: I think the fundamental difference was the discontinuation of the HOME program when phase 2 came on and the fact that builders had more leeway. There is no doubt in my mind of this because this was part of the ongoing discussions we had with them at the time. They were trying, at our instigation I might add, to put a good value house on there. I think initially the fast pace in which the builders erected and sold those houses said that they hit a good market.

Mr. Charlton: Is there any existing time frame for the additional stages in Mohawk Gardens? I do not know whether it is just one more stage or two more.

Mr. Grant: Yes, phase 3. That will depend on the marketing and the sellout of phase 2. Because of the conditions in Hamilton right now, new house building and new house sales have slowed down considerably. We anticipated when we sold phase 2 that we would be well out by now.

Mr. Charlton: On the other hand, the situation has also changed substantially in terms of vacancy rates in the rental sector over the course of the last three or four years as well. We are at a vacancy rate now, with the exception of a few condominiums that CMHC is left holding the bag on, that is extremely low compared to what landlords in Hamilton told us was a vacancy rate of about 20 per cent as short a time ago as 1978. Certainly that is going to have some effect on the ability of the market to sell units.

Mr. Grant: I keep going back to what I said before because one of those houses I looked at is on a 25-foot lot with 1,500 square feet of finished house for less than \$60,000. People should be able to afford that if they have a job and everything else, especially now with the new programs.

Mr. Charlton: So you do not have any particular time frame in mind in terms of phase 3 then?

Mr. Grant: No. It will depend on what happens in phase 2.

Mr. Lane: I would like to ask Mr. Riggs some questions regarding the function of the OMC, both before and after the merger. I never quite understood just how that agency functioned. People have come to me who wanted to arrange mortgage money in the private sector, and it never seemed to apply to them. The name seemed to be misleading, if that is the case. Are there any circumstances under which the private sector could arrange a mortgage for a housing project or were there ever any?

Mr. Riggs: The OMC mandate during the 1970s essentially related to an economic time when the private sector money for mortgages decreased and the government decided it would enter the mortgage market temporarily to stimulate additional homeowner starts and rental starts in the market. It was an interim program, temporary in nature, to assist the market at a time when the banks, the trust companies and mortgage companies had decreased their lending.

When that period ended, the mortgage company ceased any major lending in the market for mortgages. In fact--Mr. Hignett could explain this much better than I can--there was a period of time when millions of dollars of the OMC mortgages were sold to the private sector and those funds were sold to the private sector and sent to the Treasurer for the consolidated revenue fund. One of the reasons that the amalgamation of the two assets of the two corporations took place was that it was not envisioned, at least at this present time, that the mortgage company would be in the private mortgage market again in a direct way.

11 a.m.

You may ask, Mr. Lane, why they are getting into a second mortgage situation on what we call the renter/buy program. Those funds are mortgages, but the government is using the mortgage corporation's expertise and corporate staff to facilitate those mortgages, but they are not being shown on the balance sheet of the mortgage corporation as mortgages.

They will be collected, they will be reimbursed to the Treasurer in the time period, but they are not an indebtedness of the mortgage corporation which wants to cease spending from the Treasurer and pay him back. We are out of the mortgage market and we are trying to get out of the land market. As the minister said, we are trying to wind down this corporation because it is the belief of my minister and his government that the private sector can now facilitate, in most cases, the financing of the private market.

We do have other parts of the ministry--and I should mention this because some may ask why we are getting out--in planning and in community housing, which relates to nonprofit and public housing, which take care of the social side of housing. Usually, with the amounts of money that were put into land under the Ontario housing action program for servicing, in many cities of Ontario there is more than sufficient serviced land at very low prices today. In Cambridge I have heard of serviced lots priced at under \$10,000. I have not heard those prices since 1972.

Mr. Epp: (Inaudible).

Mr. Riggs: It may well be, but there is a decrease in the value of raw land in many areas; there is a decrease in the value of serviced lots in my areas; which then in turn decreases the prices of the overall product on the market.

Mr. Charlton: That raises another question. First of all, I should make sure I got what you said correctly. I think you basically said we are getting out of the mortgage market, we are getting out of the land market, but I think when you were first responding about the question of mortgages you said when we perceive the need we will get back into mortgages.

Mr. Riggs: No. I said if the government perceives the need we have a corporation that may be there during the next number of years that we are winding down our operations.

Mr. Charlton: Right. On the land side that is presumably also the case. When the government perceives the need for involvement in the land market, if it becomes the kind of problem it was in the late 1960s and early 1970s again, presumably the government will attempt to get involved again.

On the mortgage side you are talking about money, so you can, to all intents and purposes, get involved in the mortgage market at any time that the government makes a policy decision to do so. You could do that very quickly. On the land side, divesting yourself, which the eventual goal is, of all of the land banks that you have and then eight years from now or a decade from now

finding yourselves back in the situation where the government feels it has to get reinvolved, are we not creating a problem by taking the very clear policy direction at this point to divest ourselves of all of that land and then finding ourselves unable to reinvolve ourselves, except over a fairly substantial period?

Mr. Riggs: Perhaps two points: Many of the private firms the minister referred to this morning have made the same mistakes as governments--not just the Ontario government, the Alberta government, the BC government, the Nova Scotia government--that were looking at the demographics of the 1950s and 1960s, that were looking at the field conditions in the 1950s and 1960s. It has taken us some time, because governments and people, the private sector and municipalities, all have had to change their thinking in terms of the new worlds of the 1980s and 1990s and beyond.

Our demographics are changing. We are not a young society as we used to be, or not as young as we used to be. You know the baby boom was the young society; we are now an ageing society and everyone has been told this by every magazine that has ever been published in the last two years. We are a fuel-conscious society; otherwise, if you have to drive an hour to work, you are going to pay so much, increasing every year.

In the 1950s and 1960s practically every major development was on the periphery of a city; it kept getting wider and wider like spokes of a wheel. We do not see that happening. We see a retrenchment and better use of the existing structures--houses, schools which are no longer occupied, industrial buildings which are sitting there empty in the core of our cities, where we have infrastructure already built, streetcar lines, schools which are half empty, churches which are half empty at times--so we see coming back some of the population who will not go out to the periphery, so our requirements for land for that reason are less.

Second, costs are not going to suddenly decrease substantially. Even at five per cent, costs will increase; at four per cent, costs will increase. So we will build small houses. People will expect smaller houses, and that is happening and it is happening today. So we need less land.

I was talking to a group of architects and builders the other day. I came from the building industry and in my time--and I am now ageing myself very badly--a 50-foot lot was minimal. No municipality would allow a subdivision that did not have 50-foot lots minimum; 60 was average and 70 was a good lot. Today we are getting down to an average of 30-foot lots.

Mr. Chairman: Is that for a single-family dwelling?

Mr. Riggs: Yes.

Mr. Epp: It really is asinine. I do not see any need to go down to 30. We have all kinds of land in the province compared to European countries where their populations are much greater and where their land is much less, and here we are getting down to 20- and 30-foot lots. I said it when I was in municipal council and I will say it now, it is just asinine.

Mr. Treleaven: Mr. Chairman, that is a remark from an urban ex-mayor, certainly not a person from a semi-rural riding with the Ontario Federation of Agriculture looking at your land use policies.

Mr. Epp: There is all kinds of land in this province, some of it less productive than other lands, class 3 or whatever--

Mr. Treleaven: He can have it there, keep it all in southern Ontario.

Mr. Epp: --which is there for housing and everything else. It is just asinine, but that is another point.

Mr. Charlton: That is a little bit of a divergence from what I was trying to get at. I understand what you are saying and I understand what has happened out there and I understand what the movements are for the last several years and for the next few.

What I am talking about is that this is not the first time that this society has gone through the cycle you have just described. Since the turn of the century it is probably the third time we have gone through this retrenchment cycle in housing. There have been more retrenchments in other sectors, but in housing it is the third basic cycle that I can define.

I am not talking about whether you want to keep all the 70,000 acres you have. The question I am putting to you is, is it wise, given the potential that the cycle we are going through is part of a cycle, to divest yourselves of all of the land banks we have now? In other words, to be in a position 10 or 15 years from now when the government makes the policy decision that, because we have gone into a new phase of the cycle they have to reinvolve themselves in the housing market, especially in the land market, and have no land bank left with which to do that.

Mr. Riggs: As I mentioned earlier this morning, and my minister said the same thing, we are not going to divest ourselves immediately of 77,000 acres of land. We did say and he indicated that we are working towards a strategy of divestment on each of our land banks which will have to be approved by cabinet. It will be a political decision, not a staff one.

In each case the pros and cons of retaining part of it, what use should be made of it, should we interim lease for a number of years and hold, all those alternatives have to be looked at because we have many client groups. We have other ministries that have desires for parts of those lands, very legitimate ones. We have municipalities and we have universities. I should mention that one university wants to establish a major experimental station on one of our major holdings and that is a very legitimate use of those lands.

We have the private sector--and it is a problem for one segment of the private sector called cemeteries to find locations which are not first-class agricultural land, which are not full of rocks, to fulfil their requirements in the years ahead. We have some open space which can help them and help us.

11:10 a.m.

I am not saying to this committee that my ministry and this corporation is going to do it overnight. We have to be very careful about divestment of lands. Many of these lands will be held in agriculture, some leased, some sold back to farmers so they have an interest and a stake in ensuring that the lands are maintained in good agricultural production.

Therefore all I can say to you is that the political process which we must go through in terms of our strategies will be done and those decisions will be made by the policymakers of this province, not by the staff. We only give them the alternatives of divestment versus holding and the cost of same.

Mr. Charlton: Again, I was not attempting to force the policy statement on you. I was attempting to get at the sense of the policy. To me, it would make much more sense if the policy were defined just a little bit better in terms of some stated intent to maintain a certain proportion of the land bank.

I have no doubt in my mind whatsoever that the land banks, to some degree, will be divested for the purpose of providing housing. We just talked about the one case in Hamilton. Certainly, that is going to go on. It is just that the policy at this point is undefined and that frightens some of us.

Mr. Lane: To get back to my concern about the mortgage corporation, I realize that over the years the Ontario Housing Corp. has done a tremendous job in developing subsidized units for seniors and low-income families, and so forth. But that would not involve the Ontario Mortgage Corp., would it?

Mr. Hignett: No, sir. For a time, the Ontario Housing Corp. ran a program called the home ownership made easy--HOME--program. When Ontario Mortgage Corp. was formed in 1974, it really had two tasks. One was to finance and support the HOME program and the other was to provide mortgage financing for the housing action program. From 1974 to 1978 the mortgage corporation borrowed from the provincial Treasurer about \$600 million and made mortgage loans in support of the HOME program and the Ontario housing action program on about 30,000 units of housing for home ownership.

The reason that was done, as Mr. Riggs has pointed out, is this was a period of time when mortgage money from the private market was very tight. It was at a time when interest rates were moderate; we made loans in support of the HOME program at 8.75 per cent and in support of the housing action program at 10.25 per cent. So the mortgage portfolio of the corporation grew quite rapidly from just over \$200 million in 1974 to about \$1 billion by the end of 1978.

By this time, the flow of mortgage funds from the private market had changed radically. We were instructed then by the government to retreat from the mortgage market because there were

certainly enough funds available from the private mortgage lenders and, indeed, because funds were so lush that we should offer some of our mortgages to the private market, which we did. We sold \$120 million of Ontario mortgage loans to private lenders during 1978 and 1979.

Then interest rates rose so rapidly that the 10.25 per cent mortgage looked so unattractive to private lenders that there was no way we could sell them without taking huge capital losses. So we withdrew from that market as well.

Mr. Lane: The home ownership made easy program wound down in about 1977?

Mr. Hignett: Yes, I think it was at the end of 1975, was it not? The housing action program went on a little longer.

Mr. Lane: So if a developer comes to me and says, "I want to put up a high-rise and I need some mortgage money," there is no use in coming to see us. We do not have any money for him.

Mr. Hignett: That is right. The only mortgage lending we are doing at the moment is in support of the Ontario rental construction loan program and the renter/buy program, and they are both second mortgages.

Mr. Lane: Is that under CMHC?

Mr. Hignett: That is right. Or one of the banks, one of the life companies, one of the--

Mr. Lane: No. Do not talk banks to me. Talking about "bank", the word, not the financial institution, there are 77,000 acres which Mr. Riggs mentioned a while ago. Is that the amount of acreage we have in the Ontario land bank at the moment?

Mr. Riggs: Yes, it is.

Mr. Lane: That is over and above lands owned by the ministries of Natural Resources and Government Services, or what have you; that is in the land bank.

Mr. Riggs: That is correct, sir.

Mr. Chairman: Herb, did you have a question?

Mr. Epp: Yes. Mr. Riggs, OLC has about 3,000 acres in Cambridge.

Mr. Riggs: Approximately, yes.

Mr. Epp: What is happening with that? Are there any plans for it? What are your projections with respect to that land?

Mr. Riggs: There are a number of discussions under way, some which may not come to fruition. I do not know. There have been some discussions in Kitchener and Cambridge about parts of

that land for a potential industrial area. That may not come to anything. I believe there is some disagreement between Cambridge and Kitchener-Waterloo about that, but there have been some discussions on that.

We have had some discussions with the University of Guelph--they have some proposals that require money and that is one of the stumbling blocks--about the use of a large portion of that land for a number of specific agricultural stations, and I would call them that.

Mr. Epp: Experimental?

Mr. Riggs: Yes.

Mr. Epp: Has it been alluded to before?

Mr. Riggs: Yes. We have also asked the Ministry of Agriculture and Food to resurvey the lands in terms of its agricultural potential, grade it accordingly and ascertain what parts of those lands should be retained over and above the other two items I have mentioned in terms of agriculture production.

Those are the kinds of discussions we have started which, hopefully, by the end of the year a number of the large land banks will have finalized and will be being processed through the policy field committee of cabinet for their decision as to how we should handle those strategies. But all the various overtures we have had in the municipality, from Agriculture and Food and from the University of Guelph will be included in proposals that might be considered by the government on the Cambridge lands. We are quite open.

Our discussions are lengthy because we have to consult with so many people. Everyone has a concern about those lands. They are sitting in a very strategic area and when we deal with a region, a municipality, a university, as well as our own sister ministries, each one has to be given the opportunity of having an input into the use and disposal of those lands in the longer term, and that is what we are doing.

Mr. Epp: Particularly since they are in Cambridge, but Kitchener felt very much that it should have been in Kitchener.

Mr. Riggs: Yes, parts of it. There is a natural affinity between what you might call the natural border between Cambridge and Kitchener-Waterloo, which is a strip of highway called the 401.

Mr. Chairman: Mr. Riggs, of the 77,000 acres, what percentage or amount of that would be in urban areas and in rural areas? Just very roughly.

11:20 a.m.

Mr. Riggs: If I include North Pickering as being urban because it is one of our largest holdings, about 60 to 65 per cent of our lands are in urban areas. The two largest, which I would call rural, are both in the region of Haldimand-Norfolk and we have 34,000 acres between the assemblies of Cayuga and Townsend. The remainder are basically in urban centres.

Mr. Chairman: I did not hear all the minister's comments when he was talking about the basic reason for the merger of OMC and OLC. I assume it is mainly to merge the assets to repay some debts. Is there any plan or intent as a result of this merger to change the direction of the new corporation, or the policy of your ministry? We have seen what has happened in a lot of land banking in the last few years. It has been very controversial, very horrendous as far as costs to this government is concerned.

I was looking at, for example, Haldimand-Norfolk. As you know, you have a town like Simcoe spending millions of dollars in developing servicing land and private people going in there and going broke because they tried to compete with Townsend, which is also not the greatest success story in the world. This idea of the government attempting to locate people in certain areas because of some industrial strategies or something like that--I am sure you are satisfied that it is not good policy. Does the land corporation intend to continue that sort of policy or, as you indicated, do you hope to sell most of the land you hold now? I would assume from many of the things you have said that you are not putting more emphasis on land banking through this merger. It is a question mainly of pooling some assets to pay some debts. Is that correct?

Mr. Riggs: Yes.

Mr. Chairman: Yes. But the only thing I would suggest is that there might be some policy where you would be more apt to sell rural lands, particularly if you can sell them back to farmers for farm production, assuming it is prime agricultural land, than selling urban land which may be of some benefit in the event you change your housing policy or you want to get into lower cost housing or develop multiple housing or something of that sort.

Mr. Riggs: Mr. Chairman, may I give you two examples to explain what might happen depending upon government policy? In the Durham region we have two large assemblies. One is North Pickering, which is 17,000 acres and by any stretch of the imagination, it depends on when Seaton may or may not be developed. The minister has put that on the shelf and he has publicly said so.

With regard to the cost of buying back Whitby in the year after 2000 versus holding those lands and paying interest, we could undoubtedly buy it back in the year 2050 for the same price as we would hold it for and pay interest during that period of time, when we have North Pickering immediately adjacent to Whitby. So those are the kinds of options we will have to look at.

Mr. Chairman: Right. I would think some bearing on your policy is the fact that more counties and regions are now producing official plans and zoning bylaws are being updated all over the province. There is some consistency with your Niagara Escarpment Commission, for example, the parkway belt and things of that nature, and your Toronto region strategies. By laying the rules and the guidelines, either at the provincial, regional or

county level, with all the restrictions and inhibitions on private development, this is more reason why you have less reason to be in land banking. Is that right?

Mr. Riggs: Absolutely. Mr. Bennett has said from time to time--and he said it very recently--that he would like to see municipalities take a hard look at the impediments that they impose, both in terms of levies and in terms of restrictions which, from his point of view, may not be entirely necessary to the extent that they have been imposed over the last 10 years.

Mr. Chairman: "We want development, but..."

Mr. Riggs: So, really, we are working more in that area, Mr. Chairman, of trying to unwind some of the bureaucratic red tape that has been established--not only at the provincial level but at the federal and municipal levels, rather than trying to do it ourselves--in land banking and land development.

We have been successful in some cases, not successful in others--I would be the first one to say that, but we still believe the private sector generally, and this is policy issued from the government, can do it better normally. We encourage that aspect rather than encouraging any further land development on behalf of the province through OLC.

Mr. Chairman: Are there any other questions?

Mr. Breaugh: I apologize for being held up in getting here this morning.

I did want to ask about a couple of matters that I have been associated with for some time. One is, what is going to happen to North Pickering? What options are you considering for that site? That really is probably the ultimate exercise in stupidity by anyone. When I was on the regional council there we went through long agonizing hours about official plans and conflicts between the region of Durham and the province. I would hate to try to add up the number of staff hours and the associated costs that went into that long struggle. Now we seem to have an empty barn with signs painted on it as the only real achievement over that lengthy period of argument and debate.

What kind of options would you be considering for that site?

Mr. Riggs: North Pickering at the moment is composed of three land designations. One is an open space, the second is an agricultural space which has been designated, and third, there is the area which is called Seaton which is included in the official plan of Durham.

There are certain restrictions on that official plan which require the land corporation, if they do ever decide, with government direction, to proceed with that development, to have an implementation plan which requires financial impact studies and things of that nature.

From our perspective of the land corporation we are in a holding pattern. The development of this province, in our opinion, and in looking at the various economists and the Conference Board of Canada, will turn around. This is one area where development will probably proceed. I am not talking about North Pickering, I am talking about the east of Metro.

Some development will proceed east of Metro somewhere, because the lands in Metro are almost completed. All the lands in Scarborough are fast coming to an end in terms of development. Although I know some people may disagree with this statement, I happen to believe that development moves in a wave pattern. It jumps green belts, but it will not jump 25 miles, and Ottawa is a good example.

At the moment we are trying to clean up a number of issues in North Pickering. We have a number of municipalities that have asked us certain questions about the lands that border their regional municipality. York and Markham have asked us why there should be open space west of the tributary of the Rouge River. It is a natural development area as far as they are concerned, because their development almost borders that open space.

There is a study ongoing in northeast Scarborough, and there have been some suggestions that the lands, once again west of the tributary, should be included in a development area of Scarborough because it is a natural progression.

The agricultural space is in a holding pattern. We would like to make sure of certain lands that we have in the hamlets, where we have certain obligations to owners in North Pickering to move their houses. We would like to discuss with the hamlets, whether or not if we developed a few lots there, they would accept these homes and clear up those obligations.

11:30 a.m.

In the matter of Seaton itself, the next move, I believe, is really for the municipalities, and that is Pickering. I am led to believe that there may well be a request that they start a community plan, which is the next level of planning, to look at whether or not we should go any further. If we get that request from Pickering we will certainly co-operate with the municipality in the next phase of planning, which will have to take place some time. That is where we stand.

The economic conditions must turn around. There must be a reason for any new town or community about what you want, because Malvern is almost a new town. It is a community which will wind up being close to 45,000 people, larger than most of the towns in Ontario.

So Seaton is on hold, but we are very slowly, not spending very much money, looking at it, cleaning up the areas where we have border problems, requests; cleaning up the hamlets in terms of our responsibilities to them; and waiting for the municipality to ask whether or not they want to start a community plan to look at the urban area which was called Seaton.

In the next two to five years I have to say to the committee I do not see any major movement in that area unless our economy booms beyond my wildest expectation.

Mr. Breaugh: What you said was the nub of the problem. In trying to develop the region of Durham there has always been hanging over its head this concept: the land is there, the plans have been done, and all of the other municipalities are looking at that and saying, "Well, we might go into some kind of industrial land and develop that." But that is a pretty massive undertaking for those municipalities to consider.

In the back of everyone's mind is, "What are we going to look like if we go out and lay out millions of dollars to develop industrial land, and about the time we get ready to bring it on stream, the province announces, 'Oh, we would like to do that too and we have the power of the province to develop this land and to market it, and to use all of its power and influence to get it on stream, and it will fly.'"?

The municipalities, particularly along the southern part of the region, are looking at that kind of planning with a lot of fear, because there is massive investment involved in developing industrial land, and their fear, of course, is that they would have a region within a region, funded by the province and competing with them. For a long time that has been their difficulty. Whatever you do with that, I have great hopes that it will be done in co-operation with the region and the municipalities that are there. I sympathize with you to a degree. That is going to be a rather horrendous exercise.

Has anyone ever had a rationale for the purchase of the property at Whitby? Was John White driving the highway again, or what?

Mr. Riggs: I do not know.

Mr. Breaugh: I am a proponent of land banking, but I have to tell you when I was on that council and someone came in and announced the province had just bought this land at Whitby, first, we knew nothing about it; second, none of us could come up, by the wildest stretch of the imagination, with the reason why you would buy that piece of land.

The only explanation we ever got is that some real estate agent found some land and put a bid on it, and you took it. But it makes no sense from any point of view that we could ever figure out. I was just wondering if you ever came up with a rationale.

Mr. Chairman: It was a lot of bridges down the road.

Mr. Breaugh: There is not any explanation.

What about the properties you own? I know you do not want to have them, but you now own a number of condominiums, particularly in and around the Durham region. There was an attempt made a couple of years ago to kind of spruce them all up and sell them

and things like that. A few were sold and you did evict some folks on the premise that you were going to stop them from being rental accommodation and put them on the market.

I drove by them the other day and they still seem to be empty. What is transpiring with those properties?

Mr. Hignett: During the process of administering the mortgage portfolio of the Ontario Mortgage Corp., 1979 and 1980 were not good years. There were some bankruptcies like the McLauchlin project in Oshawa and there were condominium owners who abandoned their property for one reason or another and the corporation acquired about 2,000 properties, most of which were in Metropolitan Toronto. A lot of them were in the Bramalea area.

The corporation rented these properties to tenants in Oshawa, Ajax and other parts of the region because, at the time, there really was no market for them. They were private owners who had under construction condominiums which had been financed by Ontario Mortgage Corp. and who were endeavouring to sell them, so for a number of years these properties were all rented.

The market turned around at the end of 1980 and since then we have been selling properties at a much faster rate than we have been acquiring them. The market recovered to the point where there was no loss in selling these properties. As a matter of fact in some circumstances they sold for higher than the mortgage debt against them.

At the moment, the real estate portfolio of the Ontario Mortgage Corp. has declined very substantially. The projects that are left are generally for sale and they are still selling at the rate of 50 to 100 a month. As we see it now, the real estate assets of Ontario Mortgage Corp. will likely be sold out by the end of next year.

Mr. Breaugh: How many units do you still have left in the Oshawa area, in Durham?

Mr. Hignett: About 400 units in the Oshawa area. That includes Ajax--

Interjection: It is about 200.

Mr. Breaugh: Yes. One of the weirdest things that I have ever seen is that in the midst of a housing crisis where our vacancy rate per rental unit is zero point something or other, I have still got in my community, I think, somewhere in the neighbourhood of 1,000 units owned by either you or CMHC that are sitting there empty.

Mr. Hignett: It is mainly CMHC, sir.

Mr. Breaugh: It is mainly CMHC, but you have some as well. A number of people have tried to do something about this because we have a zero vacancy rate and we have brand new condominium units, some of which have never been lived in by anybody, sitting there vacant. I know that you have been making attempts to market them, probably more successfully than CMHC, but it is beyond reason just exactly what the hell is going on.

I know people who have attempted to purchase them and CMHC says, "We are not selling them." Then I ask how many there are and we get various sets of numbers because, I think, they have around a thousand units there and by the magic of classifying them as being not vacant but being renovated, even though there is no work being done on the units, they turn that into somewhere around 250 to 300 units.

It really is beyond reason why you evict people and then leave the units vacant, which you did, for example, on the Mary Street site. Some of those units are still vacant there. I understand the rationale behind what transpired there and it sounds very logical probably sitting in an office here, but it does not make a hell of a lot of sense on Mary Street in Oshawa.

You say that you have about 200 units left?

Mr. Hignett: There would be at least 100 tenants still in those 200 houses.

Mr. Breaugh: So you only have about half of them sitting there vacant.

Mr. Hignett: That is right.

Mr. Breaugh: And you were predicting that--when?--by the end of this year you will have--

Mr. Hignett: By the end of next year we will have none.

Mr. Breaugh: Can you give me an explanation? A number of people have attempted to put together some proposals to make use of these units. We talked a bit about--all we were trying to do basically was get together local groups who were attempting to do co-op projects, projects for handicapped housing, housing for retarded.

There were a number of local groups that were attempting to put together some kind of housing project. We attempted to put those groups in contact with your group and the offer was declined. Is there any reason why? Does anyone know why it was declined?

11:40 a.m.

Mr. Hignett: I am not aware of the specific circumstances, but virtually all of the housing units that Ontario Mortgage Corp. acquired through default in Durham region were condominium.

Mr. Breaugh: Yes.

Mr. Hignett: They were not acquired in total, so OMC became, in fact, part of the condominium. There were still substantial numbers of private owners in all of them and the private owners really were the heart of the condominium

corporation. They were interested in maintaining the condominium corporation and sought assurances from us that as we disposed of the houses, we would dispose of them to condominium owners. We have endeavoured to do this and have been quite successful.

Mr. Breaugh: Are you still having problems with vandalism? For a while, one of the great treats in town was to move into one of your vacant units to have a party.

Mr. Hignett: Not one of ours, I do not think.

Mr. Breaugh: You had a couple of dandies where they went in for a three-day party and cleaned them out. There are no problems any more; the parties have ended.

We have heard that one of the options available to the government that may be exercised around North Pickering or Whitby or any of the sites that you hold is that after the taxpayer has taken it in the snoot--so to speak--for holding on to this land all this time, Ontario would then turn over places like Pickering on a large scale to developers in the private sector. Then we would have the wonderful experience of having been allowed to buy the land, carry the development costs and then roll out on the private market at a bottom-of-the-market price? Can you give me a tiny assurance that that is not going to happen?

Mr. Riggs: No. I cannot give you an assurance because that is a policy issue. I can assure you North Pickering would be very difficult because most of the land was expropriated and there are very defined rules and regulations about the disposal of expropriated land. Only the government can give you assurance for lands the province bought.

Mr. Chairman: They will sell at a profit; they always do.

Mr. Breaugh: If this government rolls that stuff after this much misery and this much expense, there will be blood on the floor somewhere. That would be the craziest of all options.

Mr. Chairman: They will get their money out of it.

Mr. Eichmanis: In line with the general questioning going on, it seems to me--and correct me if I am wrong--that we are going to have difficulty paying off the Treasurer in the foreseeable future. Your plan to pay off the Treasurer is going to have to be a very long-term sort of arrangement. Is that correct?

Mr. Riggs: No.

Mr. Eichmanis: How are you envisioning to pay off the Treasurer for these lands and what is the formula you are going to use?

Mr. Chairman: They are going to make Bennett Treasurer.

Mr. Riggs: As the minister mentioned, we have had discussions with Treasury officials and Management Board

officials. Part of the reason for bringing the two assets together was that it is a unique combination. Our mortgage assets make us money when interest rates rise slightly and we are always charging interest rates about two points below the market.

When interest rates come down, our land assets become more valuable because we can sell land when interest rates are low. Up to this point, I have to say the corporation has not taken a very aggressive attitude in selling off some of these land banks, for many reasons. We need more policy direction from the government.

We have looked at a 20-year plan to pay off both the principal which is drawing interest today for the Treasurer and the principal which is not drawing interest. That plan is on paper and is being looked at by the Treasury. They have found no major holes in the amortization of that debt which is \$1,000,100,000. We will bring in an actuarial firm and a consulting firm to quickly look at the figures again.

Based upon our projections of land sales and our spread in interest rate--we do have a spread in interest rates; we have a fixed term from the Treasurer on the amount of money we have borrowed and we have a slight spread and that earns us an income--we will be paying off the Treasurer approximately, give or take, \$90 million a year for 20 years and our complete debt will be paid off. We are confident.

We went through the same exercise with the CMHC to pay them off \$112 million. They approved the amortization plan; they saw it was completely viable. We have a debt retirement fund set up which is invested and will return us so much money to pay them off \$12 million a year for 20 years to pay off the entire debt. It is a viable financial plan predicated on a return on investment and we have included no sale of land banks in those calculations. Any part of the land banks adds to the financial viability of that plan.

We have outside experts who make sure we are not conning the figures. If they concur with the Treasury people and the Management Board staff that the plan is viable, we will put the first amortized repayment to the Treasurer into effect on April 1, 1983, and they will be paid off. We calculate we can pay those off over 20 years and, even if we do not sell our land banks, it will be debt-free and can be used by the province in any way, shape or form without further cost to the taxpayers of this province.

Mr. Chairman: Where is most of the money coming from?

Mr. Riggs: We have a fair amount of development land which was purchased by my colleague here when he was president of CMHC or before he even became president, lands like Malvern and Ottawa, where we will make profits in the next five or 10 years, because the land was bought so cheaply and we are servicing it quite well.

On top of that, we have retained earnings--if you look at our financial statement this year--of something like \$34 million, which will be invested in the short term market. That spread

between what we pay the Treasurer--and we are talking about financial spreads--will allow us to accumulate an investment income, income streams from our leases, our mortgages, our agreements of purchase and sale and our land sales.

The combination of those funds, which come in every year--and we have projected our cash flow which has become very important to us--will allow us to pay off the Treasurer in full and never borrow from him again, to pay CMHC off in full, and still have a debt-free residual. That is our objective.

Mr. Chairman: Mr. Riggs, we have a policy to encourage housing construction and the sale of housing of a \$5,000 grant, and then we have the federal plan. Is that a grant or loan from the federal?

Mr. Riggs: Ours is an interest-free loan.

Mr. Chairman: That is better, yes, and then there is a federal \$3,000 grant. Would it have been better to get into the type of mortgage rate subsidization that some of the provinces are involved in? I was thinking, for example, of using our province's bank as a vehicle to subsidize these high-cost mortgages under certain terms and arrangements.

I realize that in some provinces the subsidization is a loan and in some provinces it is an outright grant for a certain number of years. Has your experience in the past in that form of subsidization been bad enough that you stayed away from that sort of assistance and came up with the straight \$5,000 loan to dovetail with the federal government? Was that considered the best method to achieve the objective I was talking about?

11:50 a.m.

Mr. Riggs: I will let Herb Hignett answer part of this, Mr. Chairman, because he is very knowledgeable on this subject. I want to go back to the AHOP loans that were made by the federal government. Downpayments were not a concern to them, with an interest right down essentially, which was added on to the loan. At some point in time you had more loan and a higher interest rate coming at you at probably the worst possible time when you could not afford it. Maybe we were a little more far looking. By the way, the province introduced its renter/buy program before the federal government even thought about it and followed that rule almost verbatim all the way.

We wanted an initiative that would do two things. One, we were very concerned about employment and we thought that if we could get new houses into the ground in the winter of 1982-1983 that would create jobs. We also wanted something that would not impose a financial penalty on the purchaser somewhere down the pipe. So we chose 10 years interest-free, pay it off over the last five years in the 15-year plan, and we felt that over 10 years anyone who was in Ontario would probably get enough of a salary increase to pay it off.

The plans out west are two years. The question always is, what happens at the end of two years if you have to face a market rate when you have been used to a rate four to five points below the market? We also felt that interest rates would probably soften in the fall of 1982 and they have. But, Herb, you might be able to expand this one better in terms of why we chose a renter/buy approach which is an interest-free loan rather than an interest right down which had a tendency to go on, year after year, at a higher and higher cost to the government.

Mr. Hignett: The interest-free loan began with the Ontario rental construction loan of a year ago which was up to \$6,000, the same term for 15 years. It was very successful. The purpose of the home ownership \$5,000 interest-free loan was to accomplish just what you suggest--to write down the interest rate on the total mortgage. The interest-free portion on the second mortgage can be up to 10 per cent of the total mortgage financing on the project and does have precisely that effect of bringing down the interest rate on the loan for a period of 10 years. For the succeeding five years the loan is paid back. It is a long-term program.

The federal government introduced their version of the rental construction loan which was precisely the same as Ontario's last year, but they elected to go with a \$3,000 grant. I think you just pay your money and take your choice. I think it is a better arrangement than the short-term arrangements that are being made, for example, in Alberta where everybody's mortgage is written down to 12 per cent for 24 months.

Mr. J. M. Johnson: Possibly this is completely off the topic but I would like to throw it out anyway. I come from a rural riding. It has been a fairly tough year and I feel that next year will be even tougher. A lot of farms will be up for distress sale, and as was mentioned earlier, some of them will go to foreign ownership because they have the money to pay for them.

Is there any feasibility or any merit in your corporation or some body of government acting as a type of land bank to invest in these farms? I do not mean in competition to fair sales to the neighbouring farmers, but to hold it maybe in trust in the province for a year, five years, 10 years and even lease it back to the owner who would be a tenant for that period of time to give him a chance to recoup and come back into the marketplace? Some of the farmers to my right are snickering. Is that too socialistic coming from a Conservative?

Mr. Riggs: I want to say, Mr. Chairman, that my minister would duck that one and say the Ministry of Agriculture and Food should look at it. Basically, he does not want to be in the land business; we are mainly residential, commercial and industrial. When you start getting into farms you are dealing with Agriculture and Food. As to what is the best use for many of our holdings, Agriculture and Food is going to call the criteria. We do not profess to have any expertise in that area, so we go to the experts, the people in Agriculture and Food.

Mr. J. M. Johnson: But Agriculture and Food does not have an arm in that direction, does it?

Mr. Riggs: Well, they are getting an arm because we are talking to them about lands that we have for new and established farmers expanding and trying to make farms more economical. We can add to them if their size is not large enough. So we are starting that process that you might be able to chat with Agriculture and Food about your thoughts because they will be becoming much more aware of the whole problem of lands in Ontario.

Are they properly graded today? The only thing I can gather is from an announcement that was made to review all agricultural lands in the future. I was told we could give away our land to some farmers, to most farmers, and they still could not make a go of it because the cost of starting up--the farm house, the farm buildings, the machinery, etc.--is such that it is very difficulty to get a foothold in those first early years.

Mr. McLean: You should have tried that 25 years ago. It was not easy then.

Mr. Riggs: I go back 25 years and it was pretty tough getting a start in a business 25 years ago, so maybe it is overemphasized. Maybe it is a crutch that people use to try to get assistance. I do not know.

Mr. J. M. Johnson: I am not talking about new farmers coming on stream. For the immediate future, I am concerned about preserving the farmers we have today. They have that startup built into their operation, but because of the financial bind they are in, they are going to lose something. If they did lose equity in their land, it would not be totally lost if some day, say, five or 10 years from now, they could buy it back. It is just a thought, and personally I do not care if it is a socialistic idea or not. To me, if there is some way that we can help to preserve our farmers, keep them on the land, I would support it, whatever it is.

Mr. Breaugh: Is it not true that you are the largest single owner of agricultural land in Ontario?

Mr. Riggs: I would assume so.

Mr. Breaugh: They may not know anything about it, Jack, but they are the biggest one in the business.

Mr. Chairman: It may be not all zoned agricultural, but they are the biggest land owner. Any other questions, gentlemen?

I have just a comment from personal experience. We seem to get in that old cycle of housing, particularly housing costs and housing inventory. For a few years, there are all kinds of development, new subdivisions opening up. There seems to be a reasonable amount of mortgage money. Sales are fairly high. Then, because of interest rates or the lack of mortgage money, the housing inventory goes down and low-cost housing is not available. What we have in many respects is priced out of most people's reach.

There is also the question of municipal requirements and regulations and levies and red tape, planning strategies within a municipality, that also aggravate the situation. The bottleneck at the municipality comes back to Queen's Park in many respects, and Queen's Park has to come up with solutions, such as the \$5,000 loan or some other type of assistance, when if the free market, private industry, the developers, the people who know the business had some of the shackles taken off their back, we would not have that sort of boom-and-bust type of cycle and they could plan ahead within reason so that there was always some inventory there.

12 noon

There is no question that land costs and land requirements and regulations have pretty well eliminated the small developer. They are all big developers now who do their own financing pretty well. But in my municipality I am sure the planning director has a stack of applications as high as that of developers who want to go ahead and develop the land they have been holding on to for 10 or 15 years at great carrying costs.

As I say, it is not necessarily the economic conditions of the day, it is the bottleneck at the municipal level. I realize the municipality has to worry about a balance between industrial, commercial and residential development. They have to worry about the cost of servicing. They do not get all that back necessarily from the developer. But if there was some way--and this is more in your ministry really than the Ontario Land Corp.--that could be streamlined and facilitated--

I realize you have the Ontario Municipal Board, you have your various planning strategies, zoning, official plans and things like that, but I cannot help but feel that if those people who are in the development business had a little more opportunity to go ahead with some of their staging so there is always that inventory ahead of demand, we would not have high costs and we would not have the problems we have today where we are looking for remedies to get people to buy houses and to get people to build houses.

Would you say there is some validity to that?

Mr. Riggs: Yes, Mr. Chairman. There is no doubt that every government, every ministry--in the interests of better housing or better subdivisions or better servicing--has added to the cost--Environment, our own ministry, Municipal Affairs and Housing, the OMB, the National Building Code, the Ontario Building Code, municipal codes.

There have to be some tradeoffs between them--what standard do you want, what standard can you afford, and the minimum standard. Perhaps in the years gone by, we have gone past what is a reasonable standard in some cases. I think that is an area that all governments have to review, and that is a personal thing.

Mr. Hignett: For a very long time, Mr. Chairman, the amount of housing built in Ontario had to do almost solely with the flow of mortgage funds. Federal and provincial governments could affect the level of housing production very substantially in times of shortages of mortgage funds by simply making funds available. The effect was immediate and very substantial.

In the present situation it does not apply. It is no longer a money problem. It is a problem of interest rates; it is a problem of construction costs and a problem of land difficulties. Making money available now does not have the same effect that it used to have--and this for the first time.

The kind of housing programs that are available now, the \$5,000 interest-free loan and the \$3,000 federal grant, 10 years ago would have produced 300,000 houses a year in this country. Now its effect is very much less, for the reasons you have suggested.

Mr. Chairman: I just have one final request. Move that boundary between Oakville and Burlington west to Hamilton, will you, please, and increase that ceiling to 115,000 in Burlington and you will get all kinds of housing.

Mr. Treleaven: With regard to the renter/buy program and the solicitors fees in particular and the way it has been administered, as I understand it, you set up the original plan that it was streamlined. I was advised of the mechanical steps you were going through to streamline it.

How has it worked out? Can you comment upon the streamlining? Has it stayed as such? Has the fee portion of the legal account stayed in the \$125 range that you contemplated?

Mr. Riggs: I shall let Mr. Haley handle this. He has helped to streamline the process and is in charge of that area.

Mr. Haley: When we looked at the procedures for the program, we considered a minimal cost to the applicant or the purchaser. It was decided that if we had to use the purchaser's solicitor to do the mortgage work for us, that would cut the cost down, because as I think someone mentioned earlier, regarding subsearches and that type of thing, the solicitor would have had to carry those out on behalf of his purchaser anyway.

We made some inquiries through the law society and through our own legal department and we were quoted fees that ranged from about \$80 to \$150. We did not think that was unreasonable. Since we were going to prepare all the documentation, it was just a matter of typing in the names of the purchasers. In addition to that, the speeding-up process was dependent upon the affidavit the purchaser or the applicant was going to give us.

After we have screened his application, an approval letter and also an affidavit are forwarded to his solicitor. The applicant has to sign it in front of his solicitor, and swear that he meets all the the eligibility requirements of the program.

About 150 applications have been rejected or withdrawn for certain reasons. At the point of signing the affidavit, the applicant will suddenly backtrack from his original application in that he did not meet all the qualifications. Generally, these qualifications have concerned their residency in the province or rental for the last 12 months.

The checking of all the applications is quite an onerous task, as opposed to the federal grant, because there is mortgage work involved. We have to give a commitment, we have to retain the solicitor and we have to send him the documents and the instructions. Then, before we advance the funds, we have to have his undertaking to pass the funds, on closing, to whoever the applicant or borrower desires, either the vendor, the builder or the mortgagee.

What has happened over the last two or three weeks is that while the applications have increased slightly, we have been able to process them quicker. We are currently in a stage of being six weeks ahead of closings. We have now approved most applications which will close towards the middle of November, and the current situation is that we hope this will increase.

Mr. Treleaven: What about the fee? Are you monitoring the fees? Have they stayed in that range?

Mr. Haley: We have not actually monitored them, simply because we have not requested that anyone advise us what fees they are paying, and we have had no complaint regarding fees.

Mr. Treleaven: It has worked out as streamlined as you foresaw?

Mr. Haley: Yes, in so far as the actual processing is concerned. We cannot see that we could really retain the integrity of the program and process the applications that much quicker. We really have to screen them to a certain extent.

Mr. Treleaven: Okay. Thank you.

Mr. Chairman: Do you write to the solicitor or to the applicant?

Mr. Haley: We advise the applicant of his approval, and in the same mailing we send out a copy of our approval letter to the applicant and the solicitor's retaining letter to his solicitor. The application itself asks the applicant to provide us with the name and address of his solicitor.

Mr. Chairman: I was wondering if you could somewhere suggest to the solicitor what the fee range would be.

12:10 p.m.

Mr. Haley: We could, I suppose, but we sort of hit at this solicitor because we consider this to be the cheapest way that the borrower would get away with paying for legal documents and so forth. Personally, I cannot understand why it could be as high as \$150. I think \$300--

Mr. Treleaven: That sounds terrible.

Mr. Haley: I cannot see that. Between \$80 and \$150 would seem reasonable.

Mr. Chairman: Are there any other questions, gentlemen?

Mr. Treleaven: There is a guarantee of title there. There is more than just the physical work. There is liability involved as well and it is hard to put a numerical value on it. When this gentleman says they have them sign, that little signing is a certificate of title at the bottom. Mr. Chairman, you would appreciate certificates of title and what goes with them.

Mr. Chairman: But this is usually a new home and the title should have been searched before.

Mr. Treleaven: That land has been there since Adam, Mr. Chairman. Remember that.

Mr. Chairman: But that house would have been bought by the applicant at about the same time. Is that not the idea?

Mr. Epp: Yes, that is correct.

Mr. Chairman: So the title would have been searched and certified.

Mr. Epp: That is a separate thing.

Mr. Treleaven: Not necessarily. It probably has been, but not always in all parts of Ontario do purchasers always have titles given a full search and certificate.

Mr. Chairman: Really?

Mr. Treleaven: Correct. Mr. Chairman, coming from a distant suburb of Metro Toronto, I am surprised you are not aware that the Metro Toronto practice of always, automatically, doing a full 40-year search is not constant throughout Ontario.

Mr. Chairman: No. not under land titles.

Mr. Treleaven: No. not under the registry system either.

Mr. Chairman: Terrible.

Mr. Haley: But I think the main point there is that we anticipate that the solicitor would have searched the title anyway for his client.

Mr. Treleaven: Usually, but not always.

Mr. Epp: Let us clarify one thing very quickly. Mr. Chairman, I will try to be very short. Are you saying that someone might get the \$5,000 loan without the solicitor having searched the title?

Mr. Haley: No, not to our knowledge because we require a title report from the solicitor to say he has title.

Mr. Epp: So usually the part of the search, the payment that he makes for the search of the title, would come in the form of the purchase of the house rather than where he gives the assurance to the Ontario Land Corp. or to the ministry. Is that not correct? Do you understand what I mean?

Mr. Haley: I do not quite understand you.

Mr. Epp: The part where the search comes in is usually in the purchase of the house or the property--with the house in this case--as opposed to the part where he is getting the loan from the government.

Mr. Heley: It should always be part of the purchase of the home.

Mr. Epp: The point I am trying to make is I do not see any reason for what I call an excessive ripoff by some people. I am sure it is a very small minority that would charge a great deal for signing this document while they have already charged for the search of the property. That is what I am saying, Dick.

As a solicitor, I am sure you are interested in protecting your profession, and I say that in a very positive way. Just as a former teacher, I certainly do not want teachers out there to give the general profession a bad name.

Mr. Treleaven: Yes. That is a problem.

Mr. Epp: So you, as a lawyer, do not want a few people out there to give that profession a bad name. When you get a few people who may be charging excessive fees, then that does not help the general impression of lawyers.

Mr. Treleaven: I think it depends upon what you call excessive. I would suggest something like \$75. Before I sat here, I would not have wanted it in my office if it only carried a fee of \$75. I would not have wanted it, I would not have welcomed it, and I would not have taken it unless forced to.

Mr. Hignett: Unless you were acting for the first mortgagee.

Mr. Treleaven: Yes. If they were coming along with it and I was having consultations and correspondence with them anyway, it is an add-on, but at \$75, it does not go very far when you are paying your secretaries nearly that much a day each.

Mr. Haley: That was the low end of the scale, yes. I would think they would mostly come in around \$150.

Mr. Treleaven: My point is there is a liability in there; there is more than the actual physical work.

Mr. Chairman: Herb, I think in that \$300 fee he was including a separate certification of title. I do not think that he had been charged for buying the land and then an extra \$300.

Mr. Epp: No. I asked this person distinctly and she told me that they had already searched the title, they had already purchased the house. This was a separate bill; this was an add-on. In fact, in the original search it was \$450 or something which, with the fees and everything, seemed to me to be very reasonable. Why they would charge an extra \$300 just to process this I could not understand.

Mr. Chairman: They probably thought the government was going to pay it.

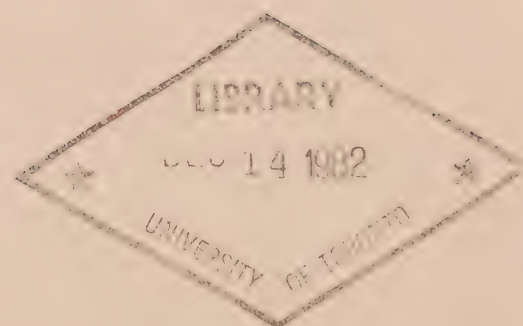
Mr. Epp: That may be. I do not know.

Mr. Chairman: Gentlemen, thank you very much for coming. We appreciated your submissions and information very much.

We will probably meet next Thursday at 10 a.m.

The committee adjourned at 12:17 p.m.

STANDING COMMITTEE ON PROCEDURAL AFFAIRS
DRAFT REPORT ON STANDING ORDERS AND PROCEDURE
THURSDAY, DECEMBER 2, 1982



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breagh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edignoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
MacQuarrie, R. W. (Carleton East PC)
Mancini, R. (Essex South L)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Substitution:

Barlow, W. W. (Cambridge PC) for Mr. Lane

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher, Legislative Library

From the Office of the Legislative Assembly:

Lewis, R., Clerk of the House, Office of the Clerk
Turner, Hon. J. M., Speaker, Office of the Speaker

From the Ministry of the Attorney General:

Stone, A. N., Senior Legislative Counsel

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, December 2, 1982

The committee met in camera at 10:18 a.m. in room 228.

DRAFT REPORT ON STANDING ORDERS AND PROCEDURE

Mr. Chairman: I see a quorum. Last week we were dealing with the draft report on standing orders and procedures and we did not quite finish it. John, do you want to carry on?

Mr. Eichmanis: If you do not mind, Mr. Forsyth will carry on.

Clerk of the Committee: We start on page 1 with the introduction. I will just read it to you.

"On April 24, 1981, your committee received its order of reference which reads, in part, as follows:

"That the following standing committees be established...with power to examine and inquire into all such matters as may be referred to them by the House, with power to send for persons, papers and things, as provided in section 35 of the Legislative Assembly Act--...Standing committee on procedural affairs...appointed for this Parliament to review and report to the House its observations and opinions on the operating of the standing orders of the House, and such additional matters as may be referred to it by the House or from Mr. Speaker from time to time.

"Pursuant to its order of reference, the committee has reviewed the standing orders of the House and the Legislative Assembly Act as they apply to private bill procedure, witnesses before legislative committees and a number of miscellaneous but nevertheless important matters. Certain of these recommendations require amendments to the Legislative Assembly Act while the changes relating to the regulation of the procedures of the House will require amendments to the standing orders.

"Reviews of the laws of Parliament and the procedures which govern the machinery of Parliament are being conducted in almost every jurisdiction across the country in response to the need for legislatures to answer the demands on the time of the House and to changing conditions in our society. Your committee has noted with particular interest the work of the special committee of the House of Commons and will be following the work of this committee closely.

"The procedures governing the operation of the House consist of ancient practices which the Parliament of Ontario has inherited from the Parliament at Westminster and procedures which have emerged to deal with changing circumstances. As Erskine May states in the 19th Edition of Parliamentary Practice, 'Modern procedure

has thus the appearance of several layers belonging to different historical periods superimposed one above the other, with considerable portions of the earliest and deepest layers still snowing through to the surface.'

"It is essential that the rules of procedure of the House be such that the House is able to operate both effectively and fairly; that the ancient practice of the House which protects the rights of the minority be reconciled with the ability of the government to secure its business; that the rights of individual members to be heard be preserved and protected; and that the House be able to require the government to account for its financial and administrative policies.

The reform of the procedures of the House is an ongoing process. Any reforms must be achieved on the basis of compromise and consensus amongst all parties in the House. It is on this basis that the standing committee on procedural affairs has operated and will continue to operate.

"Your committee will continue its review of the procedures of the House in February 1983. As part of its continuing review, the committee will be considering changes involving the supply process and the committee system, time limits on debate, the parliamentary calendar and the role of the private member. On these and other matters, the committee will be consulting with each member of the House and with the public to determine their opinions on the operation of the House and suggestions for change.

"Your committee has unanimously agreed to the proposals"--at least they had until last week--"contained in this report. A number of the recommendations deal with matters on which the House has not previously expressed itself in a precise way. These recommendations are put forward to establish a regular and uniform procedure to be followed in the House and its committees.

"In a situation where no rules exist to guide members, one might accept the words of Hatsell that 'It is more material that there should be a rule to go by than what that rule is.' In the end, as with the changes which the committee and its predecessors have already recommended and upon which the House has not acted, the responsibility for implementing the recommendations rests with the House. In view of the importance which it places on the proposals contained in this report, your committee recommends that the House give priority to the implementation of the recommendations, preferably during this session."

Page 31 is the next item. This is what we did not discuss last week and which the committee indicated it wanted in the report. It is the second paragraph.

"In its report, the Ontario Law Reform Commission recommended that an explanatory brochure be prepared for the use of prospective witnesses before committees of the Legislature and of members of the House sitting on such committees. The commission suggested that witnesses requested or summoned to appear before a committee should be forwarded a copy of the brochure well enough in advance of appearance to afford the witnesses a reasonable

opportunity to read and comprehend the material. The brochure would contain the following information:

"1. a description of the procedures used in legislative committees;

"2. the powers of committees and the method of examination;

"3. the duties of a witness, including the duty to answer all questions and produce all documents, if insisted upon by the committee;

"4. the rights of a witness, including the right to object to questions, to request an in camera hearing and to request that all or part of his evidence not be published, with the final decision resting with the committee;

"5. when the oath or affirmation may be employed and the meaning of the oath and affirmation;

"6. the statutory provision concerning failure to appear before a committee or to produce papers or things or to give false or misleading evidence; and

"7. the role of counsel at a legislative committee hearing.

"The commission also recommended that copies of the brochure be made readily available at committee hearings.

"Your committee concurs with the recommendations of the Ontario Law Reform Commission in this regard. Accordingly, your committee recommends that:

"The Clerk of the Legislative Assembly prepare an explanatory brochure for the use of members of committees and prospective witnesses outlining the role and powers of committees and the rights and duties of witnesses."

The other item that was outstanding dealt with private bills and it was on page 14. You had asked for a definition of parliamentary agent so I have photocopied two items: one is the definition of parliamentary agent from Beauchesne, fifth edition, which defines parliamentary agents as "The persons by whom the promotion of private bills and the conduct of proceedings upon petitions against such bills are carried out are called parliamentary agents. Members may not be agents."--I think that answers the question we discussed last week--"No officer or clerk of the House is allowed to transact private business before the House, either directly or indirectly."

In Erskine May's Parliamentary Practice, 19th Edition, they discuss parliamentary agents also and it is basically the same thing--I guess it is the same thing. Beauchesne has just copied what May says about parliamentary agents. In Britain they have rules which have been set down by the House which guide the parliamentary agents. There are three pages of rules here and they are quite detailed. I don't know if that's quite what we want in Ontario.

Is that satisfactory then for your puposes?

Mr. Chairman: We didn't change standing order 79. That is very interesting, that members may not be changed. The role of a member, from time to time, is very similar to that of an agent.

Clerk of the Committee: The member is to sponsor the bill; the member is the vehicle by which the bill is brought before the House for consideration.

Mr. Epp: I wouldn't think you could present it and be agent at the same time.

Mr. Breaugh: You can present it and be agent at the same time, but you would have a little difficulty sitting on a committee and pleading a case in one instance and then walking around and sitting down and voting for or against it.

Clerk of the Committee: I agree. That's it for this report. On the sheet headed up "Bills reported by committees", we reviewed these items last week and it was agreed that you take them back to your respective caucuses and discuss them and then we could discuss them further this week to see whether they should be included within the report on procedures.

We have added one item since then. It's a letter from the Clerk of the House dealing with standing orders. We have invited Mr. Stone and Mr. Speaker to attend and the Clerk will be with us this morning. Until Mr. Speaker and the Clerk get here we can deal with a couple of other items.

The first is bills reported by committees. I will read it again.

"An amendment to correct the wording of standing order 59 is proposed. Standing order 59 now reads:

"'59(a) Bills reported from the committee of the whole House shall stand ordered for third reading and bills reported from standing or select committees shall, by unanimous consent, also be ordered for third reading; but an order for third reading may, on motion, be discharged by the House and the bill referred back to a committee.'

"The word 'back' in the last line of the standing order is a survivor of the time when all bills had to be referred to committee of the whole House. The standing order as it now reads is improper in view of the fact that many bills are not referred to committee of the whole House.

"It is therefore proposed that standing order 59(a) be deleted and the following substituted therefor:

"'59(a) Bills reported from the committee of the whole House shall stand ordered for third reading and bills reported from standing or select committees shall, by unanimous consent, also be ordered for third reading.'

"It is further proposed that the standing orders be amended by adding the following new standing order:

"'60a. An order for third reading may, on motion, be discharged by the House and the bill referred to a committee.'"

Basically, what it involves doing is taking out the word "back" and cleaning up that standing order.

Mr. Breaugh: Can I point out a little problem which has occurred recently? When bills are reported from committee, if it so happens that your members from that committee are present when the bill is reported and they are awake and alive and things of that nature, no problem occurs because if they, for example, want to go for some clause by clause, if they know there are some amendments they want to propose or they want it in committee or for whatever reason they want something to happen to it, it is presumed, they will pick the bill up.

10:30 a.m.

The difficulty with that is that the members are not always present when the bill is reported. Occasionally, at the end of the excitement of question period members have to go outside for some resuscitation, to revive themselves or to face the press, and so once in a while, the members who should be in their place are not in their place. Bills are reported and the members who are seated in the House at that particular moment are not too sure whether this thing should get a little more deliberation.

There is not really any notice required, so one gets into an awkward situation. For example, if I brought in a committee report and tried to do very much with it other than speak briefly to it and then adjourn the debate, the standing orders would forbid me. But legislation can be reported by a committee chairman in a report from the committee and then promptly proceed to another stage.

We did review that standing order, I think, two or three years ago and the basic consensus was that when bills came out of committee, people would be informed at the committee level when the bill would be reported and that would be kind of the flag for them to be present when the bill is presented to the House. That would be a way to catch it.

It has been brought to my attention that there have been one or two bills at least in this session where it happened, at least from our caucus, that the committee members who had sat through the committee hearings and who had further proposals to make on the bill were not present when the bill was reported. They did not know when the chairman would report that bill. There was no obligation on the part of the committee chairman to announce to the committee he was going to report this bill next Tuesday, for example, although that is the normal process.

Clerk of the Committee: The procedure is that the bill would be reported at the earliest opportunity, so if this committee was considering legislation at this meeting today and

ordered a bill be reported to the House, it would be reported this afternoon.

Mr. Breaugh: Except there is nothing that requires the chairman to do that, there is no notice requirement. What I am trying to get at is that while it is not possible to move motions and move reports without notice, it is possible to move bills without notice. The reason we left it out before and we did not say we have to table a bill and then pick it up three or four days later was that we assumed that what the clerk just said would be a reasonable way to proceed, that is, it is a given that if you finish up with a bill this morning, it can get reported this afternoon, as early as possible.

I think where it breaks down is that in the committees now the members are moving around a lot. On the final day of a bill, people who sat through the bulk of that legislation proposing amendments and listening to testimony and all that, may happen to have not been present.

Mr. Chairman: Do you mean after second or third reading?

Mr. Breaugh: Yes.

Mr. Chairman: You are talking about first reading, are you not? Are you worried about the introduction of it?

Mr. Breaugh: No.

Clerk of the Committee: All it takes is that one person to say "committee of the whole House" and the bill will go there.

Mr. Breaugh: Except, we were placed in the awkward position, for example, I think it was with the Planning Act, where the bill was not reported at the first opportunity but was done within a reasonable amount of time, the next day or something, because they finished up on a Wednesday and it came in on a Thursday. Somewhere between the finishing up of committee and the presentation of the bill by the committee chairman there was a little communication problem.

We could adopt the position that every time a bill is reported, we would refuse unanimous consent and that indicate we wanted to have further deliberations on it. That is one option which is open to us. That is to say that every time a bill is reported, we would refuse unanimous consent.

It seems to me that that is a little unreasonable on our part and that would unnecessarily blockade the proceedings of the House. Of course, we go to great lengths in our caucus not to do that. We would prefer not to exercise that option, and I am seeking a more reasonable way to proceed and looking for direction.

Mr. Treleaven: Mr. Chairman, I think really that is an attempt at rationalization of poor attendance in the House. He is trying to come in the back door to rationalize that old idea that the government is responsible for a quorum. I do not think his line of reasoning should be allowed at all.

Mr. Breaugh: Okay. I accept Mr. Treleaven's position. Each time you report a bill you will now be denied unanimous consent. That is fair.

Mr. Chairman: The bills, of course-- Notice is not published in the orders of the day or anything like that?

Clerk of the Committee: On the day the bill is reported from a committee the bill is still shown as being referred to a committee.

Mr. Breaugh: If you look at your Order Paper in the morning and you are looking for where that bill is, you will see that it is still in committee and you will not see it coming out of committee unless you are present in the House when the chairman rises in his place.

Mr. Treleaven is quite correct. We do have an option and that is to prevent unanimous consent on all bills being reported and if that is the pleasure of the committee we would be most happy to comply with that. That is obviously the easiest way for us to proceed with it. It will block legislation somewhat but it will provide the safeguard that I am looking for to see if there are further deliberations that we want, we have the opportunity to have them. Standing orders provide us with that opportunity and I am simply notifying you that we will now exercise that.

Mr. Treleaven: If Mr. Breaugh is through, Mr. Chairman, I might say that the chairmen basically forget they are coming out too.

Mr. Breaugh: That is right.

Mr. Treleaven: And all of a sudden the Clerk's table sends up a page with a chunk of paper and you say, "On yeah."

Mr. Breaugh: I am saying it is not just a problem for opposition parties. I bet it is sticky once in a while for the government.

Mr. Epp: I concur with some kind of notification on that.

Mr. Chairman: I know the (inaudible) to make sure it goes on the Notice Paper. In other words, if you delay it for one day and it is on the Notice Paper the next day--

Mr. Epp: That would be a big surprise.

Mr. Chairman: --rather than having it come right out of committee and in the House the same day.

Mr. Treleaven: That is slowing it down if it something fairly urgent that should get on today.

Mr. Breaugh: I think the real problem is simply this. At the end of question period every day there is a general hubbub as the members get up and visit with one another, wander outside, go

back to their office to pick up committee things. It is a moment when some confusion can prevail.

I can think of a number of things that we could do that would kind of flag the item if a committee is going to report that day--if the Clerk's office, for example, sent the chairman his copy to read and then sent other members of that committee at the same time. I assume you get them about the same time as I used to and that is some time during question period, somebody will send you up a copy. Now if the same thing were done to other members of the committee, at least everybody would get notice at the same time that this bill is going to be reported today.

Clerk of the Committee: There is nothing to prevent the clerk of the committee advising that the report will be coming into the House. As I said before, the procedure that we follow and I think it would be followed unless everyone in the committee was absent, is that at the earliest opportunity the bill would be reported to the House.

It is at that point that certainly--there is a critic for each party who is responsible for the bill--we could notify the critic. We could notify each member. Perhaps one could argue there is a responsibility on the critics' part that if he or she is not going to be present, to advise that the House leader for that party to make the objection and ask for the bill to go to committee of the whole House. But if it would satisfy you, I do not see any problem with giving notice to the members.

Mr. Breaugh: Well, a simple technique like that would resolve the difficulty.

Mr. Chairman: Rather than getting it in the standing orders.

Mr. Breaugh: The original premise was not to muddy up the standing orders with notice requirements all the time and we just seem to have run into this problem of late. If it would be possible to have the table officers notify the opposition critics, or, if they are not sitting there, the House leader or somebody that there is a bill coming in today. Then at least we would have the opportunity of checking around to see whether there are any objections to it and we would not be clogging things up.

Mr. Treleaven: I agree with that. I do not think we should try to go (inaudible) the committee because half of them are there and half are not there and the clerks and pages would be running around trying to serve nonattending people.

Mr. Breaugh: That is a reasonable thing to do.

Mr. Chairman: Okay, we agree on standing order 59 amendment? We have the duties of the Deputy Speaker as the next item.

Clerk of the Committee: The next item is the duties of the Deputy Speaker and the committee has invited the Speaker and Mr. Stone, legislative counsel, to attend. If you would like to

come to the table gentlemen. Mr. Lewis, you might also wish to join everyone.

10:40 a.m.

Clerk of the Committee: On page 2 of this handout here, we discussed the duties of the Deputy Speaker and I will just read it to you so we all know what we are discussing:

"An amendment to the Legislative Assembly Act is being proposed to better define the powers, privileges and duties of the Deputy Speaker when the Speaker is absent or incapacitated. A problem arose in 1981"--and Mr. Edighoffer and the Clerk will be able to fill you in more on this--"as to the interpretation of subsection 29(2) of the Legislative Assembly Act which states:

"29(2) In the absence of the Speaker, the Deputy Speaker has all the powers, privileges and duties of the Speaker.

"The question at the time was the power of the Deputy Speaker to issue warrants when the Speaker was absent from the seat of government but not from the province. This question was one of a number which was put to the divisional court of the Supreme Court of Ontario but arguments were not heard by the court because an election intervened. To ensure that there is no question concerning the power of the Deputy Speaker in such circumstances, the following amendment is proposed for discussion:

"Subsection 29(2) of the Legislative Assembly Act is repealed and the following substituted therefor:

"29(2) The Deputy Speaker shall perform such duties of the Speaker as are authorized by the Speaker but where the Speaker is incapable of performing his duties the Deputy Speaker shall perform all the duties of the Speaker during the period of incapacity, and the Deputy Speaker has all the powers and privileges of the Speaker for those purposes."

Just as background information, members of the committee last week had asked for some examples of legislation in other provinces and I have given you a sheet which refers to the Speaker of the House of Commons Act, the Legislative Assembly Act of Alberta, the Constitution Act of British Columbia and the Legislature Act of Quebec.

Mr. Chairman: I was wondering about the word--

Mr. Treleaven: Incapacity?

Mr. Chairman: Yes. If a man is on holidays, if a man is marooned--

Mr. Treleaven: If a man is in Peterborough he is incapable.

Mr. Speaker: In fact a lot of people down there think I am very capable.

Mr. Treleaven: If you are not in the chair, then you are not capable of being at that moment.

Mr. Chairman: You are incapacitated. In other words, physically there is something the matter.

Mr. Treleaven: You are putting on one interpretation and I can put six others on it.

Mr. Speaker: He is going a step further. He knows me better.

Mr. Treleaven: I will draw a (inaudible) Mental Incompetency Act and mentally incompetent is not dealt with. It says a person is incapable of managing their own affairs. It is not that he is mentally incapable. It could be for many reasons. He cannot read and write could be one reason.

In fact we simply went through it in the court with that young fellow who has cerebral palsy. That was under that act. So there are 16 different interpretations of what incapable are, business sense and so on. So, I, like George, am zooming in on that word incapable. I think that is a wide open word. You have to define that better than that.

Mr. Epp: I was just wondering whether there is an acceptable definition of incapable. Perhaps Mr. Stone could assist us.

Mr. Stone: Mr. Chairman, incapacity has a very narrow meaning in law, as the lawyers here would know. It is generally used in respect of a mental condition, either from being a minor or from mental incapacity, and various other fringe things. I thought that saying "is incapable of acting" is widening the strict legal meaning some and I think incapable implies physically incapable.

When it comes to absence, I think if the Speaker were in a plane that crashed on Mount Everest, you could say that he is incapable. I realize there is a problem with the incapable. I have a suggestion for possibly relieving that a bit, but the main purpose of the way the draft starts out is to encourage consultation between the Speaker and Deputy Speaker, so that the basic rule is that the deputy acts where by consultation he is certain the Speaker will back him, and to discourage overparticularity, so the statute would be capable of being used for, in effect, arrogating power.

The Speaker has a great many administrative responsibilities now. The old provision dates from a long time ago and all the Speaker's duties were in the House. He was either in the House or he wasn't. Now he is virtually administering a small department, so the prime purpose is to encourage consultation.

Another suggestion has been passed around, where the "incapable" is related to "incapable of giving authorization". That would be in area where the Deputy Speaker feels that it is an unusual case; where the general authorizations that were understood between him and the Speaker he wouldn't want to have apply, or couldn't say applied. In that case if the Speaker were on vacation in Florida, I don't think you could say he is

incapable of being consulted, but in other cases he might be.

Mr. Epp: Mr. Chairman, who determines the incapability? That is an important question here.

Mr. Treleaven: You mean the courts? Such as what happened before, right?

Mr. Breaugh: Yes.

Mr. Chairman: You know, I can't understand. You refer to this situation in 1981 just before the election. What was the problem? What was the point before the divisional court?

You know, reading the present subsection 29(2) it's so broad I can't understand why there was any question about the Deputy Speaker having all the powers, privileges and duties of the Speaker. I mean, in my opinion, if you are in North York and you can't be located for some reason and there is a bit of an emergency, subsection 29(2) gives the Deputy Speaker that power. I think by trying to clarify we are really restricting here.

Mr. Edighoffer: I think the problem really referred to section 35 of the Legislative Assembly Act where it says, "The assembly may at all times command and compel the attendance before the assembly or a committee..." I think that was the big problem, the definition--whether the assembly had given the Speaker the authority, where at that time it was the committee. You see that was the big problem there.

Clerk of the Committee: The Deputy Speaker had the authority to issue the warrants also.

Mr. Breaugh: The difficulty I have with this is--I rather like the original concept, which simply said that if he is not here the Deputy Speaker can do it.

The problem I have with muddling around much more than that is simply this; there are going to be occasions when it is something urgent--a riot breaks out downstairs. You cannot say that it is a reasonable way to proceed to spend an hour on the telephone or five days in court trying to determine whether the Deputy Speaker can say yes or no.

There are other occasions when it is quite sensible to take a little bit of time, where you are discussing a moot point in law and you can find the Speaker somewhere--Bowmanville, or some exotic spot--and do the consultation process.

But to cover yourself for both contingencies, it strikes me you have to write it up so it is clear that in most circumstances and if it is necessary, the Deputy Speaker has the powers of the Speaker. Then make it a practice that those powers won't get exercised except in unusual circumstances.

I'm not sure how you proceed with this. I thought that by saying in the absence of the Speaker the Deputy Speaker has the powers--that was fairly clear.

Hugh brings out the interesting point that there are other aspects to the argument which were raised at the time, and it seems to me that we have tried to clarify that about Speaker's warrants and things of that nature.

Are we now in the same position as we were in 1981? It strikes me we're not.

10:50 a.m.

Mr. Chairman: Subsection 29(1) talks about the Speaker presiding at all meetings of the assembly. In subsection 29(2) if you add the words, after the word "Speaker," "in the absence of the Speaker from the assembly, the Deputy Speaker."

Mr. Speaker: Exactly.

Clerk of the House: This is the first I've heard of this. I didn't know this was coming up this morning at all. After listening to the problem, it seems to me that if you simply add the words "absent from the seat of government," it's almost the same.

Mr. Chairman: You have to be consistent with subsection 29(1), though, wouldn't you, Rod?

Mr. Speaker: I think you should refer to the assembly, because if you refer to government again, you get that unfortunate connotation that there is a link, and there isn't.

Clerk of the House: No, I can't see that. From where the Parliament Buildings are situation, that's all I'm suggesting.

Mr. Speaker: Yes.

Clerk of the House: But if it's in the recess, you're not going to be sitting in the assembly. Even if you're in Toronto, you're going to be upstairs or wherever.

Mr. Chairman: I think the problem is we're dealing with the Legislative Assembly Act. I'm sure they use the word "assembly" all through this act, including section 29. What is the definition of "assembly"?

Clerk of the House: If the assembly is sitting, so the Speaker is there, then there is no problem at all. It's when the assembly isn't sitting and the Speaker is out of town that the problem arises. If you can in some way just insert words to indicate that if he's absent from Toronto then, etc.

Mr. Chairman: I think section 29 is talking about the duties of the Speaker when you're in the chair, when the House is in session, not when we're--

Mr. Speaker: It goes a little bit further than that, Mr. Chairman, with all respect, when it says "have charge of the Office of the Assembly."

Mr. Epp: Just to clarify, I think if we were to dispense with those other amendments--

Mr. Speaker: If I may, I think if you refer to the assembly, I think it covers.

Clerk of the House: As the chairman has just indicated, subsection 29(2) as it stands now simply refers to the Deputy Speaker taking over from the Speaker in the House and that's all. That's all it deals with, just in the House, when the House is sitting.

If you want a section dealing with the authority of the Deputy Speaker to issue warrants, I think you've got to clear it up in section 35, not in section 29.

Mr. Chairman: I think you're getting into right field there, too.

Clerk of the House: I hadn't read sections 28 and 29 when I made the suggestion about "absent from the seat of government." As the chairman points out, section 29 deals only with in the House, while the House is sitting. That's all that section 29 deals with.

Mr. Treleaven: Mr. Chairman, likening it to corporate minutes where you have the president, and then when you have the definitions section, the duties of a vice-president, it has a clause much like this. "In the absence of the president, the vice-president shall perform those duties."

I would suggest that it be left exactly as it is. As it is now, the word "absence" has a fairly wide meaning. I would suggest that the word "absence" can mean physical absence from the House. It can mean absence from the Speaker's office. It could be interpreted to mean wherever the Speaker is required, if he's absent, the Deputy Speaker can do it. You're leaving the widest possible selection.

Like Mr. Breaugh said, if there's an emergency downstairs, that 60-second decision is made and the Speaker is "absent," then you have the ability to deal with that emergency or that situation.

Once we start putting in any words, we are particularizing, we're narrowing. Once you narrow it and deal with once phase, you may well be leaving another phase with no solution. I would rather see it left right in the place it is so that you can deal with the emergency and then perhaps pick it apart afterwards.

Mr. Chairman: The only question that remains, going back to the situation in 1981, when the justice committee was sitting on the Re-Mor Investment Management Corp. matter and the House was not sitting, I guess it was January, if you recall, is section 29 sufficient to cover that situation?

Mr. Speaker: I think with all respect, you're trying to deal with two matters.

Mr. Chairman: Mr. Speaker, you mentioned the words "and shall preside over and have charge of the Office of the Assembly." That office certainly must continue on 12 months a year, 24 hours a day. Does that fill the void that I'm talking about when the House isn't sitting?

Mr. Speaker: No, I don't think it does.

Mr. Chairman: Then we need some amendments.

Mr. Speaker: I think you're talking, with all respect, to the duties of the Speaker in section 29, and you're talking about the assembly in the next section.

Mr. Chairman: What section?

Mr. Speaker: Section 35.

Mr. Chairman: I don't know why we have to refer to section 35.

Mr. Speaker: No, I don't know why you do either, because it's quite clear. "The assembly may at all times command and compel the attendance before the assembly..."

Mr. Breaugh: That's the basis, though, Mr. Speaker, upon which the court ruled that the warrant couldn't be issued. Isn't that right here.

Mr. Edighoffer: The court didn't rule that, (inaudible) objected to it.

Mr. Speaker: Has anybody referred to May on this?

Mr. Breaugh: It didn't do us much good before.

Mr. Speaker: I think if I remember correctly that May says --

Clerk of the House: We don't have a definition of assembly.

Mr. Speaker: --something to the effect that the Deputy Speaker may perform all the duties of the Speaker with the exception of the issuance of writs.

Clerk of the Committee: The laws of Ontario would govern the issuance of the warrants.

Clerk of the House: If our act said that the Deputy Speaker could issue warrants, then the problem is solved.

Clerk of the Committee: The committee is proposing a change to the Legislative Assembly Act dealing with the issuing of warrants by the Speaker and is proposing that the committee not have to go to the assembly to request that a warrant be issued, but could approach the Speaker directly after a certain number of steps have been followed.

Clerk of the House: I'm just thinking out loud now, Mr. Chairman, but it seems to me that section 29 deals definitely and simply with the Deputy Speaker taking over the duties of the Speaker in the House when the House is sitting and the Speaker is absent. That's all it's intended to do and that's all it says.

I suggest that if you want to have a section allowing the Deputy Speaker to issue warrants or perform some of the other duties that the Speaker performs when the House is not sitting, then the simple way is to have a section dealing strictly with that. Just have a section dealing with the duties and rights of the Deputy Speaker.

Mr. Chairman: How about in section 35(2) of the Legislative Assembly Act? You'll see it there, the second line. I'll read the whole thing.

"When the assembly requires the attendance of a person before the assembly or a committee thereof, the Speaker, or in his absence, the Deputy Speaker, may issue his warrant," etc.

Clerk of the House: That's exactly what I was referring to.

Mr. Breaugh: Would the simpler way be to simply write a new section declaring the powers of the Speaker, not qualifying it when the House is in session or for issuing warrants or for anything else, but to make it that broad, that there is a role for Speaker that's clarified under the act and a subsection which points out that the Deputy Speaker may perform these duties as well and not tie it down to the issuance of warrants or anything else.

My concern would be, on a practical basis, if the House is not in session and a bomb threat occurs, the Speaker is in charge of the assembly and various parts of this building. Who's got the authority to shut the joint down? Somebody has to, obviously. I would want it clear that there is an authority there.

The committees are sitting regularly now when the House is not in session. While there won't be a steady flow of warrants, I don't think you want someone to be able to get an injunction and question whether the Deputy Speaker has the power to issue a warrant. I would like to see that as clear as possible.

It seems to me Mr. Lewis has suggested the route to go and that is a separate section defining the powers of the Speaker and the Deputy Speaker, without any qualifications.

Mr. Chairman: Or put it right in section 29 as a separate subsection.

Clerk of the House: I would suggest not section 29, because that deals only with taking over the duties when the House is in session.

11 a.m.

Mr. Breaugh: Yes, that's a valid point. As it now stands, it's all kind of tied in with something else.

Mr. Speaker: I'm not sure. I could argue that because it's says, "and."

Mr. Breaugh: What we would like to do, Mr. Speaker, is get something which just lays it out all by itself so that it will stand on its own.

Mr. Chairman: A new subsection 3 to section 35, would that be a good idea?

Clerk of the House: There is a suggestion contained here. I saw it just now for the first time. There is a suggestion contained here for simply a summons from the committee. That doesn't sound too bad, a summons over the signature of the chairman of the committee. That doesn't sound too bad.

Clerk of the Committee: On the next page, of course, there is a third point.

Mr. Epp: What do they do in other jurisdictions about these problems? What do they do in Ottawa?

Clerk of the Committee: Ottawa is on the first page of this handout, "is temporarily absent from the House."

Mr. Eichmanis: It specifies the House. That's number 4, for example.

Mr. Breaugh: Do they have a separate act?

Clerk of the Committee: Yes, this is their prize section.

Clerk of the House: Under your proposed subsection (3) on page 20, "upon the request of a committee and where it appears that a person summoned refuses or fails to attend or give evidence of papers and things, the Speaker may issue his warrant requiring such attendance," and so on. If you were going to accept that, all you would need to do is put in "the Speaker or his deputy."

Again, I come back to my original suggestion that it's much simpler and much clearer if you simply have a section that defines the duties of the Speaker and the duties of the Deputy Speaker.

Mr. Chairman: Mr. Stone, can we do something like that?

Mr. Stone: There seem to be three areas that the Deputy Speaker might be called upon to act in. I'm not sure to what extent it's the intent that he substitute.

One, as Mr. Lewis has mentioned, is actually presiding in the House. That needs to be taken care of and have a rule for that. That's a fairly simple one, because it's absence from the House.

The next one is the administration of the Office of the Assembly.

Clerk of the House: That was added.

Mr. Stone: Yes, that I believe was added when this office was formed before 1980. The next one is to what extent that should have a deputy to act upon appropriate occasions and what those occasions are.

The other is duties given to the Speaker specifically under the act in other sections, including the warrant. There may be others, I'm not sure. I haven't been through it, but the Speaker may be mentioned elsewhere and maybe in the future will be.

We have those three situations. Can they all be covered by one rule, or do we need any distinctions.

Mr. Treleaven: Could I ask a question back the other way? Arthur asked the question can they all be covered. I ask the question, is there any situation where we don't want, in the absence of the Speaker, a Deputy Speaker able to perform his functions? Is there anything that we don't want him able to do?

Clerk of the House: If I may speak to that, I'm right along with Mr. Stone on this. The problem, as I see it, if you were to make an amendment to your proposed subsection 3 there that's in this, you're only dealing with the one question of warrants. That's all you're dealing with.

If you set it out, "these are the duties of the Speaker, these are the duties of the Deputy Speaker," and if there's anything that you don't want the Deputy Speaker to be able to do, then you leave them out of the part dealing with the Deputy Speaker. It's as simple as that.

Mr. Treleaven: With respect, from a drafting point of view, I have to argue with the Clerk and say it's much simpler, rather than setting out--as soon as you start defining and particularizing, you take the chance of leaving things out. It is much easier to simply say, and I'm supposing there is nowhere that we wish to exclude the Deputy Speaker from the capacity of performing the same duties of the Speaker, "every duty the Speaker has or every privilege or right or performance, the Deputy Speaker shall have in his absence." Period. Then you can't leave anything out.

Clerk of the House: The point is, do you want to leave anything out?

Mr. Treleaven: I asked that question first and I got no response. If the answer is no, there is nothing we want to leave out, then you've got a two-liner.

Mr. Epp: Can I ask a question? Why do you refer to warrants, Mr. Lewis? Why in the past has the Deputy Speaker not had those privileges extended to him as Deputy Speaker which the Speaker has? Is there any particular reason?

Clerk of the House: It simply never arose before.

Mr. Speaker: I don't think we know whether he has or not, that's the point.

Mr. Epp: It's not clear whether he--

Clerk of the House: The point was that previously the Speaker's warrants had been so seldom necessary to use that there had never really been any problem in getting the Speaker's warrant. I never had any problem with getting the Speaker's warrant when I needed it. But this thing came along and the Speaker was up in the north country and Hugh was acting and the committee passed an order asking for these warrants, so the Deputy Speaker, acting for the Speaker in his absence--on, if I remember right, I did consult with the Speaker by telephone--and he said, "Tell Hugh to go ahead and issue them." So that is what we did.

Mr. Edighoffer: Well, (inaudible) of economy.

Clerk of the House: This was the first time that this problem had arisen, shall I say, and it's only risen the one time.

Mr. Epp: Mr. Chairman, I don't see any problem with what Mr. Treleaven has suggested. Unless there is some reason we want to exclude it, let's just say he has the same powers as the Speaker, period.

Clerk of the House: Then you have to define absence. What is absence?

Mr. Epp: Well, I think that might be simpler than to try to itemize it. I don't want to have to start itemizing and then--

Mr. Treleaven: If you start defining absence then you're tying yourself. I'd rather see it left open the way it is--wide enough that the emergency can be met downstairs. Worry about the consequences after if there is a crisis. Don't get into the lawyers arguing around on definitions. Stomp the snake. I got in trouble once before. Solve the problem--

Interjections.

Mr. Treleaven: --at that point with a nice wide definition, leaving it wide enough and then look at the technicalities after. If you start narrowing the definition, then you've got a real problem in one's mind, should you or shouldn't you?

Interjection: Isn't that what you have now? It's pretty clear--

Mr. Treleaven: Now they did it. They solved the problem. Worry about the court action five years later when they are in court.

Mr. Charlton: The injunction may in fact--

Mr. Treleaven: The legal process may in fact stop you doing whatever you've decided the deputy is going to do.

Mr. Speaker: Well, take a ridiculous example--if I happen to be home and the deputy signs it on my behalf and there is a problem, an objection or an injunction, you know it's only an hour and a half away where in the case of the former Speaker it was about three or four hours. I don't see that as insurmountable, frankly.

Clerk of the House: From a very practical point of view, what we have done on occasions in the past--and, unfortunately, on that one occasion we did not have any of them on hand--from a purely practical point of view, I have had locked in the safe in my office a number of blank warrants, signed by the Speaker.

Mr. Breaugh: I hope that practice is stopped.

Clerk of the House: Let me finish. I would never send them on my own. If the occasion arose that they asked for a Speaker's warrant, I would call the Speaker and tell him what had happened and say: "They passed a resolution asking for your warrant. May I issue a warrant?"

He would give me the approval and then I would have the warrant filled in and issued. Of course, it was never done without his specific instructions.

Mr. Breaugh: The only problem I have is that I think the distinction has to be made that what we are trying to do here is clarify a piece of legislation so that, in a technical sense, no one can hang you up, no one can go before a court and argue on some technical grounds that an injunction has to be granted, or whatever.

11:10 a.m.

In a practical sense, I think Mr. Treleaven may be right; I think there may be some practical problems with this. So I think, if we are going to give the widest possible interpretation of this, and I am not opposed to that, then I think in practical terms we have to put some caveats on it, not in the act but in terms of some practices that might be--for example, Mr. Lewis has gone at some length this morning to clarify what has actually happened in the past and I think that's precisely what we need.

We need to have a few practices established so that we don't get caught in a stage of abuse on the other side because that is the difficulty with giving very broad legislative powers, that if there is not a code of practices put together or some kind of Beauchesne or Erskine May that you can refer to as to what do I do in this particular situation, we could get ourselves into a bit of a jackpot and I don't think you would want to do that.

One of the problems that I have with it is that in this House we have come a long way in the last few years about clarifying the role of the Speaker and adding additional responsibilities and things of that nature, but I am not convinced

that we have done the same parallel process with the Deputy Speaker. Those who occupy that chair would have to speak to that.

I think we might get ourselves in a bit of an awkward situation there, where someone is asked to make a decision and is not regularly accustomed to doing that, doesn't normally do it, because part of the reason I am prepared to give the Speaker a whole lot of power is in the concept of the Speaker of this Legislature, or anybody's Parliament, who spends a good deal of his time reviewing what the precedents are, has a lot of people around him whom he can consult with, is familiar with the day to day working operations of the assembly and of all the buildings he is in charge of, so I don't have any real hangup about giving him all that authority.

To put it in its extreme, I guess, if we take people whose basic experience means they fill in for the Speaker in the chair downstairs to look after the debate, and then ask them, in five minutes, to draw upon a wealth of resource which they don't have, we are going to get ourselves into a jackpot.

Mr. Chairman: We arrived at a consensus here--

Mr. Speaker: May I just offer something? It seems to me, in the issuance of a warrant, it is never a life and death proposition; it is never issued the same day that a decision is made.

Mr. Chairman: Sometimes; it all depends on--

Mr. Speaker: All I am saying is that in Ontario there is no problem in getting hold of somebody; it can be done quite easily. If the Speaker or the deputy is absent from the country, that is another matter; but certainly being absent from this building, or being absent from this city, or even absent from this region, I can't see as being any great hangup.

Clerk of the Committee: Mr. Speaker, if I might just give an example, during the Re-Mor hearings with the justice committee the committee would make a decision on a daily basis as to who would appear the next day. When Mr. Lewis first investigated it, when Mr. Stokes, who was Speaker at the time, was in his riding, to fly someone there was going to take better than a day and to charter a plane was going to be \$7,000, so it was almost impossible, unless you are willing to spend \$7,000 per warrant, to have that warrant issued the same day, so that it could be served on a person that day and then the person appear the next day.

Mr. Speaker: I suppose the other side of the coin to that goal would not preclude anybody picking up the phone and saying, "Mr. Speaker, your presence is required."

Mr. Breaugh: Except (inaudible) had no phones.

Mr. Speaker: No, I realize that, but having--

Clerk of the Committee: We tried that at one point and we had messages left all over northern Ontario.

Mr. Charlton: There are not only some places in the province where there are no phones, there are some places in the province that you can't get to from here.

Clerk of the House: The Speaker can always, I suppose, by telephone direct his deputy to issue the warrant in his name.

Mr. Stone: Mr. Chairman, that thought I got trapped in when I took the idea of basing it on authorization, that would allow a phone call to authorize in an unusual act like that, or the Deputy Speaker to go ahead and, if there is a challenge, which is going to take days or weeks, the Speaker can always back the deputy and say, "Yes, I authorize that."

Mr. Treleaven: I would suggest, like most businessmen do, just sign a couple of warrants in blank and leave them in the desk drawer when the Speaker goes away.

Clerk of the House: That's what I think is the best plan; that's what used to be done.

Mr. Treleaven: Like a blank cheque.

Clerk of the House: What would happen then is that I would call the Speaker, wherever he was, and get his authority to fill out one of those forms.

Mr. Chairman: Gentlemen, we can't seem to come to a conclusion for one reason or other. Shall we leave it with Mr. Stone and ask him, in the light of our discussion today, to either make the necessary amendment, realizing what we want to achieve, whether it is to section 29 or to 35, or maybe even to section 98, which is that the Speaker may in writing delegate the Deputy Speaker, or by phone?

Mr. Edighoffer: I just have one question. The way the act reads, say the Speaker and the Deputy Speaker were both away, as they sometimes are, and the Deputy Chairman was sort of in charge of the House for the two or three days when a committee was sitting and he wanted to issue a warrant, would the present act allow the Deputy Chairman to sign that warrant?

Mr. Speaker: It doesn't say that.

Mr. Edighoffer: No, it doesn't say it, but the standing orders give the Chairman all the powers.

Mr. Speaker: Maybe we should restrict the Speaker and the deputy from being away at the same time.

Clerk of the House: What does it say about the Deputy Chairman of the committee of the whole House?

Mr. Edighoffer: Just in the standing orders it gives them all the powers of the Speaker.

Mr. Speaker: It's not covered in the act.

Mr. Edignoffer: It is not covered in the act, but I am just wondering whether he would have all the powers or not.

Clerk of the House: It is given by the standing orders, all the same powers in the absence of both of them.

Mr. Charlton: Is there anything in the standing orders about when the procedural affairs committee travels to London the Speaker and the Deputy Speaker shall toss for attendance?

Mr. Speaker: The three of us were there at the same time, as you recall.

Mr. Charlton: That's right.

Mr. Speaker: Without ever a thought of the grave possibilities.

Mr. Epp: Democracy came to a halt.

Mr. Chairman: Mr. Lewis has to get away. Do we have any more discussion this morning?

Mr. Epp: I would like to raise another point in the presence of the Speaker; Mr. Lewis may answer the point.

It came up in caucus the other day and it has to do with the question that Mr. Breithaupt put to the Speaker a week or two ago--this has come up other times, but specifically that time--and the 60 minutes were up and it was time to change the channels, and so forth, and go on to another program. The Speaker cut Mr. Breithaupt off in that case. I am not being critical; he had his instructions, according to the standing orders, to go 60 minutes, the question had been put, the answer had been delivered and that was it. Mr. Breithaupt in that case, as well as in other cases, didn't have a chance to put a supplementary question.

A number of our caucus members felt that maybe the Speaker at one point should say, "We have time for one more question," and then at least you have the time to put that question without it dragging on.

Mr. Chairman: In other words, allow the usual number of supplementaries.

Mr. Epp: Yes. We are not suggesting that the thing go on for five or 10 minutes but, somehow or other, at least the person putting the question should have the chance to put his supplementary.

Mr. Speaker: At that point, if I may, there was a rather peculiar circumstance. When Jim stood up to ask the question, almost immediately time ran out and I allowed him to go on with the question and evoke an answer from the Attorney General (Mr. McMurtry). I felt particularly sensitive about allowing the supplementary--normally I have in the past, but I was already over

time. Having regard for some of the criticism of the past, I am fairly sensitive about these matters.

11:20 a.m.

Mr. Charlton: We won't criticize you.

Mr. Speaker: I suppose, in a case like that, you say you don't want it to go on for five or 10 minutes, in actual fact it could go on--

Mr. Epp: What would be wrong, Mr. Speaker, if you suggest at that time--

Mr. Speaker: Unanimous consent.

Mr. Epp: We tried to get unanimous consent and one person more or less objected. That, in itself, takes up time.

I am wondering whether it would be possible for you to say at that time, "The time is up but we have time for the supplementary question by the questioner and an answer."

Mr. Speaker: I think the problem is going to be aggravated even more in the future. We are putting in clocks for everybody to see and everybody will have an opportunity to see what time is being taken and what time has been used.

Clerk of the House: What time is left.

Mr. Speaker: The standing orders are fairly specific. I don't want to be unfair and I do bend a little bit from time to time. I felt badly in that particular case because I knew of the circumstances personally and I have great respect for the person asking the question, but I just felt that because we were over time at that point it would be stretching it.

Mr. Breaugh: As I remember, the rule of thumb roughly, at least from the Speakers I have seen, is that if you can start your question before the time expires you will be allowed to finish your question and a response will come, but you can't start a second question on it.

Mr. Speaker: Exactly.

Mr. Breaugh: I don't know that you can get much better than that. That leaves an option for me, as a member. If I've got a really important question which demands a supplementary, I can turn around to someone else in my caucus and say, "Have you got something you can do in 30 seconds?"

Mr. Speaker: As a matter of fact I was rather surprised, and I don't say this in any critical sense, I had advance information the question was coming up and I was rather surprised it didn't come up somewhat earlier than it had. That is none of my business, but--

Mr. Epp: I understand that concern. I think part of the

problem has been that this fall--and other times, too, but it has been more emphasized this fall--we have laid one or two other questioners on in addition to the leaders' questions. Some of the leaders' questions have taken a lot of time, for whatever reason. I think he was second on the list. I don't think he was first after the leader but I think he was second.

Clerk of the House: The point, Mr. Epp, is that usually we are over; almost every day we are over time. As Mr. Breaugh says, if the questioner gets his question started before the 60 minutes is up, he can finish it and then he can get the answer, but with the questions and answers the way they have been, by that time we are as much as five or six minutes over without any supplementary.

Mr. Speaker: As you may recall, the august chairman of this committee wanted to ask a question one day and I missed him, so I went completely around the House again and we were substantially over time at that point.

Mr. Epp: But he did get his question.

Mr. Speaker: He did get his question, but one of the members came up to me afterwards and said, "Mr. Speaker, you are 11 minutes over the allotted time," and he was dead on.

Mr. Chairman: When he saw my hand he said, "Well, rotation."

Mr. Speaker: Exactly, I wouldn't dare do it otherwise.

Mr. Epp: This came up again and is particularly sensitive because of the issue that was raised. It really demanded a supplementary in this case. We never had a chance. I recognize your sensitivity to it because of the case, it is from your area.

Mr. Speaker: I try to be fair, and I will always try that, and I will use my discretion to the best of my ability. I don't want to take advantage of the situation, that is all I am saying.

Mr. Epp: I will leave it with you.

Mr. Chairman: Art, did you want--

Mr. Stone: Yes, Mr. Chairman. If this is to be left with me, I would like to have a very brief recap while Mr. Speaker is here to try to sharpen the focus just a little.

I take it then that the general rule, that is that the absence of the Speaker applies when the matter is in the House. Is section 98 sufficient for dealing with the business of the Office of the Assembly?

Mr. Speaker: If I may, it says the Speaker may delegate to the deputy. A phone call could trigger that, a letter or note following could validate it or confirm it. There is no time limit

there. I think that should be done in any event, just to have it on paper and have a record of it.

Mr. Stone: But operating under section 98 now is sufficient and there are no problems?

Mr. Speaker: I do not see any problems.

Mr. Chairman: This is the confusion that I am having here.

Mr. Speaker: Yes, but you go back to section 29, and it says very clearly: "In the absence of the Speaker, the Deputy Speaker has all the powers, privileges and duties of the Speaker."

Mr. Chairman: It is referring back to section 1.

Mr. Stone: Mr. Chairman, we are going to rewrite it. We are going to plough it all up anyway. So let us focus on how we want it to end up.

Mr. Breaugh: My suggestion would be that if the Speaker of the House of Commons deserves a special act unto herself, our Speaker deserves at least his own clause.

Mr. Stone: I take it then, it is referred when it comes to special matters, like warrants, that the Deputy Speaker should have the authority, after consultation where possible, in some way.

Mr. Chairman: Yes, where possible. If he is the member for Thunder Bay and he is with a dog team half way between Dryden and Kenora or something, you cannot get him.

Mr. Stone: We cannot get too specific today. It is just the principle that there is to be consultation where possible. Otherwise he is not to be obstructed.

Mr. Chairman: And he has the same powers as the Speaker in respect to the issuance of warrants and things of that nature.

Mr. Stone: Mr. Chairman, is there anyone I can confer with between meetings of the committee?

Mr. Chairman: I would delegate Mr. Forsyth.

Clerk of the House: I was asked to come this morning at 10:30 on this other matter. So, as I thought we were dealing with it at 10:30 a.m., I made another appointment for 11:30 a.m., which is just about reached.

That is this matter of my suggestion to deal with this problem of debates taking place before the orders of the day have been reached. As you know, I made the proposal for an additional clause to standing order 3, that should the matter under debate at 10:30 p.m., when the orders of the day or notices of motion have not been reached, the Speaker must put any question necessary to complete the matter being debated.

I have been giving that some further thought. It occurred to me that, as the only things that can be debated before the orders of the day have been reached are routine matters, that is motions for adoption of a report, motion for changing committee members, motions for the House meeting early, that sort of thing, that the House should not spend the whole sitting day, both afternoon and evening, on such routine motions.

I am therefore now suggesting, and I have here copies of my suggestion which I suggest could be passed out along with my original suggestion, that as these are routine motions, the House should never allow more than one sitting for them. As you know, a sitting is two and a half hours. I therefore suggest that, instead of the clause saying "10:30," as in my previous letter, it should say "5:50 p.m.," so that, at 5:50, the Speaker would have to put any necessary question to conclude the debate--

Mr. Epp: What about Friday morning?

Clerk of the House: Or at 12:50 p.m. on Friday, allowing for a five-minute bell and a vote.

Mr. Breaugh: I have a bit of a problem here.

In the first letter from Mr. Lewis, I was impressed that at least there was some rationale in there, and it substantiated a previous opinion which I have expressed here that, at all times, the chair has the prerogative to see the clock. So if there is some big wrangle going on, and it is obvious that this wrangle is going to proceed for some time, one graceful way to call an intermission, so to speak, is to have the Speaker say, "Well, it is 6 p.m. and I am leaving the chair," or, "It is 10:30 p.m. and I am leaving the chair." It seems to me that then provides an occasion for some arbitration or whatever.

It would be my proposition that, whenever a situation like this would arise, it would be an unusual one. It has only happened once since I have been here. It seems to me that the way to deal with unusual situations is, not to attempt to be restrictive on them, but rather to find some mechanism which allows for a little cooling off, so that someone else can sit down quietly and work this out.

I suppose, from a government's point of view, this recommendation is a very expeditious way to handle the problem; but I would put it, from an opposition point of view, that all you are forcing me to do is to find some other technique which would allow me to continue that debate. I do not think that is wise. I think it is skirting the issue. It puts a little stress and strain on the opposition to come up with a little ingenuity, but that is not really that difficult.

I would propose that what is recommended here is not a solution to a problem, and I am therefore a little reluctant to accept it.

I understand that, if we were dealing with something that said, "This happens pretty regularly," that someone was, for

example, picking up committee reports and wanted to proceed to have a debate on that right then and there, and that they were using this once a week to kind of grind their axe, then I would be prepared to go to some system like this which says, "Okay, you can grind it until 5:50 p.m. and then that is game over for you; or maybe you can grind it again that evening until 10:30 and that is it." But I do not see that as being the case, and I am a little reluctant to kind of rewrite the rules to deal with rare occasions.

Mr. Chairman: We have to have something to deal with emergencies, Mike.

Mr. Breaugh: Okay. I guess the House of Commons is the best example I could think of. It is not a very ingenious piece of business, but all they did there was to say: "Things are rotten; we don't like it. Ring the bells as long as you like." The result of that was that the committee has recommended some substantial changes to the House of Commons, which probably would not have happened unless Mr. Nielsen had decided to get a little ornery on that day--

Mr. Speaker: They did not deal with the bells though.

Mr. Breaugh: Yes, that is my point exactly, that it is a rather unusual way of handling these things. But in that instance they did not rewrite a rule which says, "You can't have another bell situation;" and I think that is the way you have to proceed. I would have a little bit of difficulty with this. If it was done in a context, I could accept it without any problem.

Frankly, I also have no problem at all with the basic premise. What I thought was unusual when this situation arose is that it seemed okay for the Speaker to see it is six o'clock, so that everyone could go and eat; but come 10:30 p.m., for some reason, they were not prepared to do that.

Is a visit to McDonald's that important that you can adjourn the House, but at 10:30 p.m. it is not? There is a little discrepancy there.

Mr. Speaker: You do not adjourn at 6 p.m.

The Clerk of the House: Mr. Chairman, if you would like me to discuss this further, I shall. At the moment I have made the two proposals, one for 10:30 p.m., one for 5:50 p.m. I should like to leave those for the committee to consider, and if you want to discuss it with me further, I shall be available. If I may, I should like to leave it there for the moment.

Mr. Speaker: To further muddy the waters, if I may: I guess what you are saying is that it hinges on the interpretation of routine motions.

Clerk of the House: They are routine motions, because the only motions that come up before the orders of the day are routine motions; and that is the point I was making.

Clerk of the Committee: Might I just point out that one of the reasons Mr. Lewis raised this matter with the committee was to give it an opportunity to express its opinion to the House, or perhaps for the House to express its opinion on how it wished to proceed in such cases, rather than having the Speaker be in the position where, without precedent, he has to make a decision which perhaps may not be what the House wishes.

Interjection.

Clerk of the House: The only other time this sort of thing happened was before we had the 10:30 p.m. rule, you see; and we just kept on all night.

Mr. Chairman: Basically it was a situation that arose as a result of some committee meetings going on, and at the same time you did not reach the orders of the day or notices of motion, was this not it?

Clerk of the House: This was simply because they kept on debating the motion for presentation of the report all afternoon and all night.

Mr. Chairman: Right.

Thank you, Mr. Lewis.

Mr. Epp: Mr. Chairman, with regard to this amendment and others that we have in the package, and the fact that we have discussed some of these amendments before, we have taken the position in the past, and I would like to reiterate it, that what we need is an overhaul of the standing orders of the Legislative Assembly Act and so forth, a number of these things.

As you know, they have had a fairly thorough review in Ottawa recently and have brought in a report. When I am speaking here, it is on behalf of the caucus. We feel very much that there should be a thorough review of these orders and the Legislative Assembly Act and so forth, in Ontario.

I should like to recommend to you again, and to the committee, that we go on record as recommending a thorough review, rather than this piecemeal approach. We have the benefit of the report from Ottawa now, and of a lot of the leg work they have done. I think that, rather than wait for them to adopt it and everything, we should start now to review the various areas that need it.

I should like to ask the clerk of this committee to perhaps come in with a report of the various things on which the committee has raised questions, and to see how the committee could look at the possibility of making a recommendation to the government whereby this committee would undertake a thorough review of these various areas.

Clerk of the Committee: The committee certainly has the power at present to do that, in any event.

If I may just comment on the report of the special committee in Ottawa: I think one could call it almost piecemeal, because they were not able to get any agreement, except perhaps on calendar time limits. Some of the very important issues were all postponed to a later date because they could not reach consensus on it at this point. That is why at the back of the report there is a list of quite a few items which are scheduled for further consideration.

I guess all I can say is that in the draft report we have dealt with the items which members have raised with the committee, or about certain matters on which concerns have been expressed around the House. These were the remaining ones we have on our list.

I had spoken to the chairman last week about the idea of writing to all members of the assembly, which I think my predecessor on the committee did at one point, asking for comments those members might have on any areas where they see a need for change, or where they have concern or want explanations. That is one thing we could do; and in February we could devote some time to considering those concerns, and perhaps in not quite so piecemeal a manner as this.

In the introduction there is still the question--Mr. Ruston came into the committee and raised the question of time limits and asked that we consider that issue. There is a question, a good one, I think which the committee in Ottawa has looked at, the parliamentary calendar, establishing some sort of set times during which the House sits, so that it would give members an opportunity to know when they are going to be in their constituency and when they can plan for certain things.

We have done a report on the question of bells. I guess this committee has acted where the other one has not; but it is the House that has not acted on that before, so it is out of our hands right now.

Mr. Breaugh: That is what I was going to find out. I watched the federal special committee with some interest in its report and have had the opportunity of seeing some of its debate on the matter. There were some ironies in there.

We have, printed and before the House, a good deal of work that they have not yet begun to do. The recommendations have been made, the stuff has been printed. The stumbling block is that we have been unsuccessful in getting more than a preliminary debate on, for example, the report on committees.

It seems to me that we have gone about it in a slightly different way. There they went from a crisis, which kind of blackmailed the government into proceeding, and then they went for quick consensus on two or three simple points. We went the other way around, perhaps because it came out of a minority, of rewriting the standing orders, making reports on, for example, the electronic Hansard, the report on committees. We have on paper a lot of that background work.

11:40 a.m.

What we have been unable to do is to get anybody to take any action on it. I'd like to know what it is that we could propose which would make things happen. Obviously, I am thinking that, for example, on the committee reports and on two or three other items that we've reported to the House, the tradeoffs have not occurred. What struck me about the federal thing was the first order of business, almost, was to go for time limits on debates. They got those in relatively short order.

I would be an advocate of accepting that kind of thing in the situation where I wanted to strike a balance between opposition parties in Parliament and the governing party. The governing party obviously has great interest in limiting debate. As an opposition member, I would be prepared to accept that if I saw that I got other vehicles which allowed me to be more effective, to play a different role or whatever.

What we can do as a committee other than rewrite previous reports? I don't know. Can we invite the House leaders, once again, to come before us and make an argument that we would like those reports to come to a conclusion, that we would like some decisions to be raised? I guess the best one is the electronic Hansard where we even went so far as to bring other committees in and to write joint recommendations to the House. We haven't even managed to get debates, really, on that matter, let alone conclusions.

At the time we seemed satisfied with the notion that the Speaker would take that under consideration, would do the costing, would gather a consensus as to what form that might take, who might actually run the facility and all of that. That managed to put that in a vault there with the Dead Sea scrolls.

There are two options open to us. We have always tried here to do the kind of logical route. Let a committee debate something, let it come to a consensus, let it write a report, table the report, let the House debate, let the House leaders negotiate. I have to admit that the sum total of that effort is zip, and I'm becoming a fan of Erik Nielsen, that the first order of business may be to blow up the joint and in the rubble of the place sit down and decide what do we do now.

I am becoming increasingly frustrated. I realize it's only been seven years, but I have a low tolerance for that kind of stuff. It seems to me that in some way maybe we give it one more shot at trying to do this logically. That failing, and I have to admit that my theory is that it will fail, something a little more dramatic ought to occur.

One of the things I thought was really funny, in listening to the debates on the federal report, they strayed a bit from the report, but it was almost word for word what members in this committee were saying three or four years ago--almost word for word. You couldn't come to a quick consensus. There were some things you weren't going to resolve, but you had to do something.

They talked about the estimates and time and question period, all the things that we talked about. We have at least got the advantage of having put forward a consensus report of sorts. The basis for an agreement is there. We've just not been able to get an agreement.

Mr. Chairman: Okay, it's just a matter of getting the House to deal with it, really.

Mr. Epp: We'll blame it on you then.

Mr. Breaugh: I'm just serving you notice of motion. Either the House deals with it or somebody else will.

Mr. Charlton: We could recommend a change to the standing orders that in future all reports of the standing committee on procedural affairs will be implemented unless specifically defeated by the House.

Mr. Treleaven: That recommendation won't quite make the House.

Mr. Breaugh: We can go over to (inaudible) and get a set package of Monte Cristo No. 3 and stage the revolution.

Mr. Chairman: I might tell you that every once in a while there is a meeting of committee chairmen. As you know, when Mr. Reid is at that meeting, it meets occasionally to discuss some of the mutual problems that the chairmen have.

We've discussed the idea of having this committee or a select committee of some kind, probably made up of most people on this committee, to review all the standing orders and also to review the reports we have submitted to the Legislature from this committee with the idea of implementing the recommendations in those reports.

We pointed out that they seem to be bogged down. It will probably end up in a letter to the Premier (Mr. Davis) requesting that such a committee be set up to go over the whole gamut of standing orders and procedures in the Legislature.

Mr. Epp: Would you suspect that would be forthcoming fairly shortly?

Mr. Chairman: Yes, and I would suspect that the chairmen will probably be collectively writing to the Premier requesting that action be taken.

Mr. Epp: Would you report to us when that has been done?

Mr. Chairman: Yes, I certainly will. Okay, I think we can carry on with this report that you have in front of you. We've dealt with bills and the duties of the Deputy Speaker. We want to deal now with the referral of estimates to select committees.

Clerk of the Committee: I'll just read what it says here.

"A matter concerning the referral of estimates to select committees has been raised. Standing order 46(b) clearly contemplates the possibility of both standing and select committees considering estimates. However, standing orders 46(a) and 46(c) speak only of estimates in standing committees.

"There has been some concern expressed by members that the estimates of the Office of the Ombudsman should properly be referred to the select committee on the Ombudsman. The select committee, in its ninth report, recommended this. This recommendation was adopted by the House on November 18, 1982. It is proposed that standing orders 46(a) and 46(c) be amended by inserting the words 'or select' after 'standing' in both standing orders."

Mr. Chairman: Agreed?

Agreed to.

Clerk of the Committee: The next item is government response to committee reports.

"Another matter for consideration is a requirement the government respond to a report of a committee within a fixed period if the committee requests that such a response be tabled. In many cases the committees of the House now attempt to ensure that this very response is made by writing letters to ministers and having the clerk of the committee follow up on the matter.

"A special committee on standing orders and procedure recently made a recommendation on the subject as follows: that within 120 days of the presentation of a committee report the government shall, on the request of a committee, table a comprehensive response. The committee may wish to consider a similar provision for Ontario."

Mr. Chairman: That answers the problem.

Mr. Epp: I think it certainly helps a great deal. I think it's a real step forward. There were some suggestions, in fact, we felt that period was somewhat long and it should be about 90 days, rather than 120 days.

Mr. Breaugh: We've been looking at four years; 120 days looks awfully short to me.

Mr. Treleaven: What does the word "comprehensive" mean?

Mr. Breaugh: It means we'll table an answer to this--

Mr. Treleaven: A compendium? Is a compendium a synonym for "comprehensive response"?

Mr. Eichmanis: I don't think so, if you've looked at compendiums.

Mr. Treleaven: I'm sorry, in ignorance I have to say I wasn't here last week. Did you discuss this fully?

Mr. Epp: It was raised.

Mr. Breagh: I think that's been a problem. For example, with reports out of this committee, on the agency stuff it's not bad in terms of the ministers at least taking the time to sit down and say, "We've thought about your recommendations and we're going to do these. We're putting these off to Management Board of Cabinet." The track record there is reasonable. They've done it within a reasonable period of time, by and large. One or two I could think of took their sweet time, but by and large they did that.

The problem comes about on other kinds of reports where you just table the thing. Sometimes you have a debate, but the inevitable problem is the one we've just discussed, nothing happens. Then you have to try to find it in the system, who's got it, is anybody doing anything to it. The power of the government to respond by giving no response is, I think, somewhat overused. It is what Brian just said.

If the government decided, for example, on the reports of the committees, "This is all very nice, boys, but we don't want to do it," at the very least I think they should say so. That's a lengthy period of time for them to make up their minds on that. I don't think that is an unreasonable request.

After all, what always strikes me as frustrating around here is that when I first came here I sat on a select committee on highway safety. We spent, I think, about two years on that. We read reams of stuff and we hired staff and travelled. It was a tremendous expenditure of time, money and effort on the part of everybody who was involved with it. Some good things happened, but we are waiting.

For example, last week the Ministry of Transportation and Communications responded to one of the things that had been recommended five years ago. There had been no response for five years on the matter.

11:50 a.m.

They could have said within 120 days, "That's a reasonable idea and we would like some time to pursue the mechanics of how that could be adopted," but you don't know. You have no idea of whether the work of a select committee is useful, dumb, wasted. The only answer you ever get is piece by piece over a very long period of time.

I think it wouldn't be a bad exercise or a heavy onus to put on a ministry or the government in total to say, "Listen, when a committee spends that time and money and effort to put together a report, prepare a response to that." I'm not saying they have to say yes or no all the time right away, or "We'll put that into law by next Tuesday morning," but I think it's unfair to people who work on committees here and prepare reports to just let the thing sit there.

Mr. Chairman: You've heard the discussion. Is there any comment on the 120 days? Herb raised that.

Mr. Epp: I still would like to see that reduced to about 90 days.

Clerk of the Committee: The other feature is that it's only when a committee requests a response. The committee may feel it's a matter it doesn't want a response on.

Mr. Chairman: Are you implying the 120 days is all right, or it should be shorter?

Clerk of the Committee: I don't care, it's not my decision.

Mr. Breaugh: I don't have any problem with that, because I can think of occasions where you might put in a very comprehensive report.

Mr. Chairman: You're talking about four months.

Mr. Breaugh: If you make it 30 days or something, you know what the reply is going to be. "It's going to take us longer to come up with a reply."

Mr. Chairman: How about 90 days? Is 90 days better?

Mr. Treleaven: I'm not concerned about 90 or 120. What I'm a little concerned about is this word "comprehensive."

Mr. Chairman: Complete, you know, comprehensive, not a facetious answer.

Mr. Treleaven: Right, but comprehensive can mean something that a ministry might have to put staff, staff, staff, staff, for weeks on.

Mr. Epp: They wouldn't do it.

Mr. Chairman: No, you have the deputy minister drafting a letter for the minister's signature.

Mr. Treleaven: The "comprehensive" bothers me a wee bit, but not the 90 days. Hell, my tickler system demands it in three weeks, outside. I don't wait 90 days for nobody.

Mr. Chairman: Dick, you have seen some of the responses that we've been having in our agency reports to the ministers. You know, "We have this under advisement," or "We have been considering this point and it has merit," ridiculous answers like that. To me, we need something more than that. What's the matter with the word "comprehensive"?

Mr. Treleaven: Okay.

Mr. Chairman: It's complete. It says to deal with every damn thing that's raised in our report, that's all.

Mr. Eichmanis: Now that we're looking, if you say "comprehensive" that seems to be sort of the ultimate, ideal

thing. Chances are you're not going to get it, but if it's there you will kind of tell them, "You've got to do more than say 'We like it' or 'We don't like it.'"

Mr. Chairman: If there's a difference of opinion on "comprehensive," we're not too concerned, but at least their idea of what's complete. Okay, that's fine.

Do we want to take a minute to go back to the question of standing order 3? Mike, were you happy with the original suggestion of the Clerk of the House, Mr. Lewis's letter?

Mr. Breaugh: This is his initial letter?

Mr. Chairman: His initial one said, "Should the matter be under debate at 10:30 p.m. when the orders of the day"--

Mr. Breaugh: If I could split it into two parts, I am an advocate that at six o'clock and 10:30 p.m., whoever is sitting in the chair sees the clock and gets out of there and you crank it down. I have no problem with that.

The other part of it is that the mechanism which he is using for doing that is somewhat different. This does concern me a little bit, and that is that you start putting motions, putting questions.

Again, I would reiterate that you can do that. That is one technique which is available to you, but if you're in a situation where it's abnormal--and I would suggest that this is not going to occur in a normal situation because it is routine motions--for practical purposes what you're doing is forcing those members who are debating a particular matter to seek a second device. You're not resolving the problem, you're simply shifting gears.

The device that I could think of, right off the bat would be, if you accepted what the Clerk first involved here and you said at 5:50 p.m. we want the motion put; my obvious second device is to ring the bells. I don't care. Ring them for 20 days.

Clerk of the Committee: Well, you see Mike, the question that the Clerk is trying to focus attention on here is last Thursday we were faced with the problem of what happens at 10:30 p.m.

Mr. Epp: The same thing--

Clerk of the Committee: No. The House just rose at that point Herb, because the standing orders say at 6 p.m. the Speaker can leave the chair.

Mr. Breaugh: But, before the standing orders of the day, you're in the hands of the chair. It's my understanding that the standing orders don't apply.

Clerk of the Committee: No. The standing orders say that at 10:30 p.m. there is an automatic adjournment, and we hadn't reached, at that point, the orders of the day, so--

Mr. Breaugh: Before the orders of the day, aren't we in the hands of the Speaker?

Clerk of the Committee: No. We're still guided by the standing orders and what they say. We couldn't have at that point moved the adjournment of the debatement, because the standing orders say you can't move the adjournment of the debate when you haven't reached the orders of the day.

So we were left in a position where you didn't know--where the Speaker had two options: either he accepted the argument--one argument is that he had to put the question, or the second argument that the debate be deemed to be adjourned and it be called at the government House leader's pleasure.

What the Clerk was trying to do here was to give the House the opportunity to express its opinion on how to proceed as opposed to putting the Speaker in the position where he will be criticized.

Mr. Breaugh: Let me just finish off here. I want to simply reiterate. This is not the normal piece of business you're talking about, if it were I'd have no difficulty with this.

I mean, all this would say to me is that it would now become a regular practice if there was a controversial committee report coming in. I would naturally seize the opportunity to take the afternoon or the afternoon and the evening to debate that. If this is rewritten in that way, that's certainly what I would be recommending to my caucus--that every time a bill is reported, every time a committee report comes in where we would like to spend some time pointing out initially before the report really got tabled, we would want to point out our differences of opinion.

Here is another occasion that instead of having an emergency debate you can have the afternoon or the afternoon and the evening to do that. That will become a regular course of business. But if you say, well we want to devise a rule here that will kind of quell the riot, I would put to you that you are not doing that. If you accepted this kind of thing I would simply turn around to my caucus and say, that at 5:50 p.m. he can put the question, so to speak, and that means ring the bells. Ring them.

Mr. Chairman: No, no. He is talking about a five-minute bell.

Mr. Breaugh: I would say to my members, I don't care what it says in the book; I don't care what the government House leader wants; I don't care what the deputy whip wants or the what the chief government whip wants, ring the bells.

Mr. Chairman: No, no. If you take the amendment as proposed by the Clerk you would put, say, using what you have here after the words on the third line--assuming you change 10:30 p.m. to 5:30 p.m. and you say, "The Speaker must, after a five-minute bell, put any question necessary to conclude the matter being debated."

Mr. Breaugh: And I would start by saying that the second move is, don't respond to the bell. The move after that is, when they come back in here at 8 p.m.--I mean, that would allow the government to have a five-minute bell. I suppose they could make the precedent that they would vote without all members being present. They could do that. That wouldn't be a hangup with me. My next step would be, I don't care what they want to do at 8 p.m. We will find something else to do with that.

You are talking about an unusual circumstance where there is a pitched battle here, and in that particular situation I can't think of a rule under the sun which is going to get you out of that. But we'll get you out of that in some attempt to cool it off, to let the House leaders have a little debate in the corner, or get it off to a committee. There are several devices which you can use, but you are not going to stop the controversy by the use of rules.

Mr. Charlton: I'd like to speak to this question, Mr. Chairman. I agree with the route, Mike, is going. You don't solve the kind of rare problem we are talking about here--

Interjection.

Mr. Charlton: Sure it's rare.

Mr. Epp: It's the first time it has happened in 125 years.

Mr. Charlton: Let me finish, Mr. Chairman. You don't solve that kind of a problem by cutting it off; by getting people's backs up further than they already are.

The way that we should be attempting to deal with this is as, Mike, has suggested, change the standing orders to make it clear the way you deal with it is by having the Speaker see the clock and adjourning the House.

12 noon

Clerk of the Committee: But what happens to the matter before the House? You have to resolve that issue before you can adjourn the House, otherwise this thing is just locked in limbo out there.

Mr. Breaugh: Are you suggesting that you will resolve it by forcing it to a vote?

Clerk of the Committee: No, I am not suggesting that, but how can you adjourn the House when you have this matter before the House? You cannot adjourn the House until you--well, you can because the standing orders say so, but you have to also deal with the issue.

We have this debate proceeding. What are we to do with it? The standing orders, because they are fairly recent, the amendments dealing with adjourning at 10:30, do not speak to that

question. As I said, one argument was last Thursday that the debate on that report would be deemed to adjourn.

Mr. Charlton: Well, you can deal with it that way in the standing orders, or you can just change the standing orders to say that because the Speaker is going to see the clock at 10:30, that a motion to adjourn the debate is in order.

Mr. Chairman: What is the difference between that and Mr. Lewis's--

Mr. Charlton: Adjourning the debate is not calling the question.

Mr. Chairman: It is not concluding it?

Mr. Charlton: That is right, and it is then up to the government when they call that matter back on to the floor. It is not up to us.

Mr. Chairman: Do you want to get something like that?

Mr. Breaugh: You see, if I could just point out to you, (inaudible) want to speak to this, in my view what this recommendation would do for practical purposes, and let us take the only example I have ever seen is the example here.

You would have been able to at 5:50, in effect, call the question. That means the report would have been accepted by the House and put on the table and you would have been prepared to proceed with the bill. I hope no one has any illusions that that would have speeded up the process of dealing with the legislation, because it would not have.

As a matter of fact, not to tell too many tales out of school, we discussed this somewhat about what might happen, and we decided that we had gone far enough on that particular item and the logical way to get us out of this without causing further problems to the chair, to the House, was to have the member who was speaking sit down, which did, in fact, resolve the matter.

Mr. Chairman: --every day in a different caucus?

Mr. Breaugh: Anybody's caucus. If the people debating it decide that is it, that is enough, they have in fact resolved the issue and they will let it proceed. If you use a closure motion, if you use this--

This is a very similar technique to what the British House uses regularly. The purpose of the exercise there was what Smirle said, that at the end of the day you have dealt with the business. The purpose of the guillotine motion, so to speak, is to come to a conclusion on something, but it means every day the opposition makes you use the guillotine motion as a regular course of business. As they have done, you can shrink the time but you cannot stop the process. It goes on inevitably.

My difficulty with putting this into rules is that every

time you put it there, if you stick it in front of my nose, I am going to say if there is a rule there, let us use it.

Mr. Chairman: That does not seem intelligent. It does not seem mature. It does not seem rational--as if the rules there were to provoke the opposition. To me the rules are to bring some order to the procedure of the Legislature, and stop the God-damned time wasting that goes on. If we, as an all-party committee, can come to some consensus on what we feel is a reasonable--

Mr. Charlton: What is your definition of "time wasting," Mr. Chairman?

Mr. Chairman: I mean day after day on the same point, the bells ringing for an hour, for two hours--that is wasting time.

Mr. Charlton: Well, nine times out of 10 when the bells ring for an hour, it is at the wish of the government.

Mr. Chairman: No, the bells rang the other day for an hour. That was not at our request.

Mr. Charlton: The bells rang the other day for an hour because the government members were not here.

Mr. Chairman: No, that was an opposition request. I do not know which party.

Mr. Charlton: No, it was not. As a matter of fact, on the particular bell you are talking about, we had agreed to come back in at 8:50. The government whip came back to us and asked us for 9 or 9:10.

Mr. Chairman: That is after discussion with the Liberal whip.

Mr. Breaugh: That could be. That is possible.

Mr. Chairman: It was a Liberal motion.

Mr. Treleaven: I agree with Mike in one way, that there is logic and rationality to what he is saying. Now having said that, I totally disagree with everything else he said. He wants another lever to gain debate and I say that is not a proper place for debate. I agree that it should be cut off and rules should be put here that forces the question to come. I do not believe in building in another. We already have too many avenues for the opposition for a minority to block the majority.

Mr. Charlton: He is not talking about (inaudible) already exists.

Mr. Treleaven: Correct, and it should be closed out. You have debate, you have filibuster, you have third reading, you have committee of the whole House, you have all these other devices. There is no necessity for the minority to have another device to block the majority. This is a democracy and if an election means anything, an election means that the majority of the people wanted

that majority party to rule. They do want a minority totally blocking the whole workings of the House.

Democracy does not mean build in devices whereby the whole process can get blocked. In particular, Mr. Breaugh is advocating blocking up the House in two ways. You can either block the House by prolonging that debate or, if the government does not call it back the next day, the orders of the day, it still has blocked that government bill. That is another device to block that government bill from returning to committee to the House.

So therefore it is a blockage of government legislation by a majority government, correct. I do not think that the natural alternative is to let the bells ring indefinitely. The opposition has all these other avenues and all these other devices like filibustering, committee of the whole House, third reading, on and on. There are many other devices. I do not see that that is a necessary alternative.

Last thing, it blocks the committees because the committees always say they will adjourn to reconvene following routine proceedings and it is in the orders and the sheets and so on following routine proceedings. Well, the routine proceedings under standing order 25 go right down past the introduction of bills. Therefore, the committees cannot meet, therefore a debate on a report blocks not only the House for the rest of that day, but all committees for that day. Government is brought to a standstill.

It should not be allowed, and some device should be set forth in the standing orders, some clarification, to stop that being able to happen and be caused by a minority.

Mr. Charlton: Is this going to stop it?

Mr. Treleaven: Some device to bring it to a definite time conclusion, yes.

Mr. Chairman: If you want to work within the rules of the House.

Mr. Charlton: You missed the one major point that Mike made. Do you want to spend every afternoon doing this?

Mr. Chairman: --order, that we are flouting you in some way, therefore you are going to circumvent this by using the standing order not for its intended purpose, but just to indicate your objection to some sort of inhibition.

Mr. Charlton: You are missing the point. We had a debate once on a report from a committee last Thursday. That is the first time in my time here that that has occurred. We have a major disagreement over Bill 179 and I think that is understood, and it is very clear that our caucus intends to do everything possible to interrupt the progress of that bill or to delay the progress of that bill.

Mr. Treleaven: Subvert, do you like that one?

Mr. Charlton: Let's suppose this rule had been in place last Thursday.

Mr. Chairman: At 10:30 it would have ended.

Mr. Charlton: At 5:50 or 10:30 the debate on that motion would have ended and the government then says, okay, we are going to bring back the bill on Tuesday afternoon for committee of the whole House. What is to stop us, in order to delay that bill, using this crazy rule you are talking about putting in place to debate another committee report so that we do not have to deal with Bill 179 on Tuesday afternoon?

That is the kind of technique you are going to get into. It is not a technique of wanting to obstruct the second committee. It is the technique of getting at the piece of legislation that is, in fact, that issue.

Mr. Treleaven: Mr. Chairman, if there is a determination to block there are umpteen avenues of blockage and I say take the ones that there are and let us not create new ones. Let us keep it sensible and reasonable. Just have a plain old filibuster.

12:15 p.m.

Mr. Charlton: The preference in a filibuster, whether it is on a report from a committee or on the bill itself, the preference in a filibuster is at least to discuss the controversial bill at question, rather than having the opposition force phoney debates on other committee reports in order to accomplish the same purpose.

That becomes the question. Do you want to have the filibuster around Bill 179 or do you want to have the filibuster around umpteen other issues that are of no consequence to that debate?

Mr. Treleaven: We are not going to come to any consensus on this for sure.

Mr. Breaugh: This is useful because I think, as I said before, I am becoming an advocate of Erik Nielsen's school of thought on this matter because Erik puts forward a very strident argument that what should happen in situations where a parliament reaches an impasse is not to do the traditional thing, which is all of the tools which you mentioned, and that is, nothing really happens but the debate proceeds in a variety of forms, a filibuster or whatever. Traditionally that is what a parliament does. Nielsen's school of thought on that is that you do not--and this is only my opinion on it--proceed with debate. You just shut the whole thing down. You stop it completely.

When he had the bells ringing for 13 days he clearly established that he was not even interested in meeting with House leaders or anything else. As far as he was concerned, a complete impasse was reached in a majority parliament where an opposition party did not like what the government was going to do, and was not even prepared to talk about it. He was just going to lock up

the doors and you could ring bells and do whatever the hell you want, but until that majority government was prepared to make some accommodation in some way to a minority party's position--in this case the roles were reversed--he was not prepared to proceed with even taking a vote.

Now I have to admit that he has been, in the federal Parliament of Canada, more successful at changing things than we have been here. We have traditionally said in this committee and in other places we will use the traditions of a parliament. We will do a little bit of filibustering here.

For example, as a practical one, when this happened last week, we were the ones who in effect shut down the debate. We said: "We went through the afternoon and we went through the evening. We have made our point. That is as much of it as we want to make this afternoon. We will have Jim Foulds sit down and we can proceed. If two or three other people want to say something we can now proceed with the bill." So in that weird thing you saw a minority opposition party say: "Okay, we will let it proceed. We have gone far enough and we did not want to take it any further." If anything, this proposal would have lengthened the debate somewhat, only by a few minutes.

I do think we have to somehow get to a point where if we agree to disagree on a bill or on a premise, this committee has to find vehicles which get us through that impasse.

It may be that Nielsen is right. When I first saw their approach to that I thought that really was a harsh thing to do because what that says is, stop the parliamentary process. Stop it completely dead in its tracks and then just wait until you get a response from a majority government in some form.

That runs against the grain of parliament because parliaments traditionally say you keep the debate going. That is the important thing. The vehicles are there at your disposal and you have (inaudible) three or four of them and there are more, but the primary purpose of a parliament is to debate something. So as long as you can keep the debate flowing, it does not matter that the legislation is blockaded.

Nielsen's school of thought is the other way around. He just says, "Shut her down." I have to admit, from the attempts that we have made in here to change this joint, he was just about as successful as we were and certainly in a much shorter period of time. Maybe we should be moving to something which is snarper and less traditional.

Mr. Chairman: That would be putting time limits on speeches, for example?

Mr. Breaugh: He is now, but again, what he did there was tantamount to blackmail. He said, "We will shut it down, and when you crank it up then we want to deal and we want to deal in short order." He managed to do something that we have not been able to do in four years. He did it in six months.

Mr. Treleaven: A minority should not have the right to block the majority and I do not care whether a PC is there or a Liberal or whoever. A majority should win out in the end after the minority has made its point to the public by filibustering or whatever.

Mr. Charlton: Did the majority did not win out in the end in the Ottawa situation? The minority got some concessions in the way in which it was dealt with.

Mr. Treleaven: A minority should not be able to shut down Parliament. That is not the democratic process.

Mr. Breaugh: The bottom line is, though, that a minority cannot. If the government chooses to, there are a range of options on the government side as well. That is what a parliament is all about. There are options on both sides and you get a chance to choose when you exercise your options.

Mr. Chairman: What do you mean the government could have gone right back? In the Ottawa situation? There was no way to resolve that Ottawa situation unless there was an agreement with the House leaders.

Mr. Treleaven: They should not have that right.

Mr. Epp: Let us not get carried away with the majority. I recognize that the government has a majority of members but one thing you have to keep in mind is that the government did not get the majority of votes. The majority of votes went to the opposition.

Mr. Chairman: Let us not get into that one.

Mr. Epp: I am not suggesting you change that specific thing, but as for representing the people out there, the opposition parties, in a sense, are representing more people than the government is.

Mr. Chairman: Mr. Treleaven has indicated there does not seem to be a consensus on this particular point.

Mr. Treleaven: I agree.

Mr. Breaugh: --useful, Mr. Chairman, is that someone around here had better thrash this out. Someone had better talk it out in advance of that situation happening or we are going to get into exactly what the federal government got into. Now maybe that is desirable, but I have always been an advocate that where we can find some consensus that resolves our problems in advance of them happening, we ought to at least try it.

Mr. Chairman: This is where I cannot understand your point, Mike. We have a suggestion of how to at least have some direction on a situation such as we had last week. Realizing that you have certain desires in your caucus to make a point and it is going to take some time to make that point, we say, okay, at least so that everything is not up in the air as far as the standing

orders are concerned, let us make an amendment here so that you know that you have until 10:30, or you know that you have until 5:30 with the bell or something like that.

In other words, not how do we frustrate it, but how do we bring some direction in a situation like that that is in the standing orders, so that you know that by 10:30 at night or whatever time we put in, your point is made.

Now, if you feel that you can get around that the next day by introducing another similar motion, fine. I think you are saying that you have not made your point; 10:30 was not long enough so the next day you do the same thing. I do not think that is a reason to keep the amendment out of the standing orders.

Mr. Breaugh: Let me just say this. In the century or so that this place has been in operation that has happened once.

Clerk of the Committee: There is another one. If you remember what happened on a--

Mr. Breaugh: Okay, twice, three times or whatever. On the occasions when it has happened, particularly on the most recent one, the problem resolved itself in less time than this standing order requires.

Mr. Treleaven: By you acting responsibly.

Mr. Breaugh: The argument I am putting to you is, if you open this up you are doing what Mr. Treleaven said was not a good idea. You are providing to a parliament yet another vehicle to take on the government.

I am putting to you that if you write it up and put it in, you are inviting people to exercise it. You are resolving one problem which occurs once every 30 years or so by putting in a standing order which would give them a chance to do this every day of the week.

I do not think that is a sensible way to proceed. I am an advocate still that the standing orders should be minimal and that you do not write standing orders to deal with situations that happen every 30 years, because you are going to make them happen every other day.

Mr. Treleaven: Have you got a guarantee it will only happen every 30 years?

Mr. Breaugh: Well, that is the track record so far.

Mr. Chairman: I agree with your point. I can see your point in that if we had this amendment that is being suggested by the Clerk, you fellows would not have put your heads together and have Jim Foulds sit down.

Mr. Breaugh: That is right.

Mr. Chairman: You would have gone until 10:30 or

whatever time. There is no question, but would it have been so bad, that is all?

Mr. Barlow: It would not have gone until 10:30. It would have gone until 5:50 would it not?

Mr. Chairman: Whatever the situation.

Mr. Breaugh: If there had been no bells, we would have picked up the next report tabled.

Mr. Treleaven: There seems to be a problem as to whether it would have cut off then or it would have kept going on and on like an unlimited bell. That seems to be the problem.

Mr. Breaugh: That would have been another option. You are just giving us another option.

Mr. Treleaven: No, at least we know we are done at 10:30.

Mr. Epp: I think you are missing the point. I think Brian covered it very well. If you cannot do it on one report, then you wait for the next report and you talk about it. Then you talk about the third report and the fourth report and that way, rather than have it resolved by 9:30 or whatever it was, you could have been going the next day and the next day.

Mr. Treleaven: It takes a day for a report. This way you can have 14 days on one report with the interpretation that it goes around the clock.

Mr. Epp: It would have been resolved.

Mr. Chairman: I think we have exhausted that point.

Clerk of the Committee: If I could just ask for some direction, we don't seem to have any agreement on either the question raised by the Clerk or the question dealing with the duties of the Deputy Speaker. Would it be your wish that we continue to discuss those, include these other three items in this report and get this report into the House as soon as possible so the House can deal with it, if possible, in this session?

Mr. Treleaven: Look at your draft report, page 37, last page, of the report on standing orders and procedure, number 1 on the agenda today. If you look at page 37, 18(p), second line, it bothered me; the words "out of," "out of proceedings," that bothered me because of the possible ambiguity. I put down "from" as precedent, the word "from" instead of "out of". I asked Mr. Stone and he agreed with me on the possible ambiguity, but he suggested, instead of "from", the word "in," "arising in proceedings" and then there is no possibility of ambiguity.

Mr. Epp: Where are you?

Mr. Treleaven: Standing order 18(p), line 2. Remember the whole thing is dealing with privilege in the House and outside of the House; that is the whole crux of the exercise. If you use

the words "arising out of proceedings" there is a potential ambiguity. He and I agreed on it it should be "in". I agreed with his wording, "in proceedings," that is a common phrase, "in" instead of "out of."

Mr. Breaugh: You are not changing the intent.

Mr. Treleaven: It is not changing the intent at all.

Mr. Breaugh: If you read Erskine May on precedents about privilege, at least half of them have to do with matters which do not happen in the chamber. You are saying that that is just fine, but here you are saying you want to be only matters arising in proceedings and that something else would handle matters that happen elsewhere. Is that right?

Mr. Treleaven: Yes. Here you mean "in," but you are using the term "out of" or "from." There is no difference in intent, Mike, I don't like the words "out of" being used when you are dealing with "in."

Mr. Chairman: Do you realize you are talking about the exception in this whole section?

Mr. Treleaven: That is correct.

Mr. Chairman: Just an exception?

Mr. Treleaven: That's correct, other than "out of." It bothered me and Mr. Stone concurred. That is when I knew I was on the right track.

Mr. Chairman: I think we know what we mean. In other words, it was something in a newspaper, not something raised in the House. Isn't that basically it?

Mr. Treleaven: There is no doubt of what we mean by "outside of the House" and "outside of the proceedings in the House," but you have used "out of proceedings in the chamber."

Mr. Chairman: You are suggesting the word "in." I don't see anything the matter with that.

Mr. Treleaven: One arising in proceedings. It is the flippant use of "out."

Mr. Chairman: In other words, we are talking about a question of privilege, where it is to be raised by a member when he wants to raise a matter that did not arise out of a discussion or debate in the House.

Mr. Treleaven: You just flippantly used "out of" again.

Mr. Chairman: No, I am quoting from here. It wasn't flippant at all, Richard.

Mr. Treleaven: Casual?

Mr. Chairman: It is so divided, shall we say.

Mr. Treleaven: You are using a colloquial expression, "out of" something. Mr. Stone agrees with me.

Mr. Chairman: The word "in," there is no objection to that; we are talking about something that took place in the House.

Mr. Chairman: We will adjourn until next week, gentlemen.

Mr. Epp: What is on next week?

Mr. Chairman: We will raise these points. We will have someone back from Mr. Stone and we will also deal with the House of Commons committee's recommendations for their procedure.

The committee adjourned at 12:25 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS
ORGANIZATION OF BUSINESS
TUESDAY, DECEMBER 21, 1982



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
MacQuarrie, R. W. (Carleton East PC)
Mancini, R. (Essex South L)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher, Legislative Library

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Tuesday, December 21, 1982

The committee met at 4:40 p.m. in room 228.

ORGANIZATION OF BUSINESS

Mr. Chairman: I see a quorum. The committee will come to order. Gentlemen, you all have a copy of a letter dated December 10 from the Attorney General (Mr. McMurtry) to me regarding the Law Society of Upper Canada. As you can conclude after reading, marking, learning and inwardly digesting that letter, there ain't no way that law society wants to come before this committee.

Mr. Epp: How did you ever get at that, Mr. Chairman?

Mr. Breaugh: I haven't seen the law society say that yet. I have seen the Attorney General say it at some length.

Mr. Treleaven: Maybe when they get Rendall Dick after January 1, they'll be glad to come.

Mr. Breaugh: I think we have dealt with the matter, Mr. Chairman.

Mr. Chairman: I think we should leave the invitation as is. I will make a point of talking to the Attorney General informally. I will also talk to the new under-treasurer, as of January 2 or 3, who knows his way around this building like no one else.

Mr. Breaugh: Now that's an Ontario works program.

Mr. Chairman: I will say, "Look, the committee would just like to have some information about certain aspects of the law society." I think it started out, Mr. Rotenberg, when you wanted to know something about the legal aid system.

Mr. Rotenberg: Once the law society came up, I indicated legal aid was something we should be dealing with.

Mr. Chairman: Right, that's the type of thing. The questions we will ask will probably be very similar to the questions the Attorney General is asked in his estimates. I made it plain to his executive assistant that you fellows won't lay a glove on him, so what's he worried about?

Mr. Epp: Only if there are gloves to be laid on. I mean, if they've got a lot to cover up, then we may get to them. I don't expect there would be anything like that.

Mr. Chairman: I think we should have the treasurer or under-treasurer--they call him that instead of an assistant treasurer for some reason--and any other officials such as the

secretary. I don't think you intend to embarrass them in any way or ask questions that you don't feel are quite relevant, whether it's about legal aid or the disciplinary methods the society has with regard to its membership and things of that nature.

Mr. Treleaven: You're painting with a pretty wide brush, Mr. Chairman. I want to inquire into trust accounts and what changes are in the works as to that kind of matter; what the situation is now and what changes they have planned.

Mr. Epp: I'm a little surprised they feel so insecure that if they come forth they may divulge information they shouldn't divulge and so forth. I find that very difficult to comprehend.

Mr. Rotenberg: Mr. Chairman, as a matter of principle, the Law Society of Upper Canada is set up by this Legislature as a self-administering body. Whether it would do it or not, the Legislature has within its power to change that legislation and bring the Law Society of Upper Canada back under the jurisdiction of the government. I don't think we would ever do it.

They are the administrators on our behalf of legal aid, which is many thousands of dollars of public funds.

Mr. Lane: Millions.

Mr. Rotenberg: Millions of dollars of public funds. As the Legislature, we have the right to ask them to come before us in a friendly manner.

They should, in effect, say how they are spending public funds as in legal aid and how they are employing the trust we have given them to do such things as run the law business of this province. That includes disciplinary hearings, and when members of the public complain about lawyers doing things wrongly or improperly, rightly or wrongly.

I think we should know a little bit about their operation. They are a public body and I don't think we should just drop the matter because of this letter.

Mr. Treleaven: May I make a short comment as to the Attorney General's letter. In the third paragraph about the fourth or fifth line from the bottom, he says, that he finds difficulty--

Mr. Chairman: On the first page?

Mr. Treleaven: Yes. That they should be reviewing the operation of such groups where there is not a relationship with the expenditure of any public funds. We just got through his estimates and there are tens of millions of dollars--I cannot remember exactly--of public funds going into legal aid, so the law society is administering quite a number of public dollars. I just point that out.

Mr. Breaugh: Did you call for his resignation?

Mr. Chairman: The law society is one of five agencies or tribunals scheduled for reviewing this coming February. I think the invitation should stand. The letter really does not convince me as well, as it does not convince Dick Treleaven. Some questions were asked during Mr. McMurtry's estimates regarding legal aid and things of that nature, such as certain disciplinary measures that were taken against certain lawyers.

That type of conversation went on during the estimates. We do not want to talk about that type of thing here. If there is anything he feels should not be discussed I am sure the indulgence of the committee will be begged. Is that good English?

Mr. Breaugh: I think it is a good idea.

Mr. Chairman: So, in any event, I think I will reply to it on the basis that we still want him to come and confirm the date.

Mr. Treleaven: You had better hold off on that until we are going to sit. Don't call us, we'll call you.

Mr. Chairman: Just a minute, gentlemen. Do not start throwing wrenches--

Mr. Treleaven: I think Jack Johnson has something to address.

Mr. Chairman: We are satisfied then that whenever we meet that we want the law society along with the four or five other agencies. Is that the consensus of the committee?

Mr. J. M. Johnson: I am not sure, Mr. Chairman. I think it is rather foolish to be discussing the agenda we have before us.

At the time we set the agenda, we had no idea we were sitting in January; at least, I certainly did not. Now we are called back January 17, as we were called back in September for two weeks. We are called back on January 17 for one, two, three or four weeks--however long the opposition feels like staying. Quite frankly, I, as a member, am not going to agree to a schedule that has to be changed.

Mr. Chairman: This House would not dare sit in February.

Mr. J. M. Johnson: I do not intend to sit here for three weeks or four weeks in January and February in the House and then come into this committee and sit for another three or four or five weeks.

Mr. Chairman: You are looking for a few extra dollars, are you?

Mr. J. M. Johnson: I think while we are at it, Mr. Chairman, we best discuss the trip to Washington because I understand you discussed that with the whip.

Mr. Chairman: I have given up on the whip. I have gone to the government House leader.

Mr. Charlton: Hasn't everyone given up on the whip?

Mr. Chairman: I feel that man will not listen to reason. At times you just cannot reason with that man, so I have gone to his immediate superior.

Mr. J. M. Johnson: When was the latest trip to the House leader?

Mr. Chairman: I have gone to his immediate superior. I have written a letter to Mr. Wells and asked him for a decision on this, because we have heard back from Washington. Everything is laid on.

Mr. J. M. Johnson: Have you received the decision?

Mr. Chairman: From Mr. Wells?

Mr. J. M. Johnson: Yes.

Mr. Chairman: No, I have not. He is not the quickest replier in the world. I have tried to buttonhole him in the corridors of power and to date I have not been too successful.

Mr. Treleaven: I think Mr. Breaugh has a more direct pipeline than you have, Mr. Chairman. Maybe he can help us out with this.

Mr. Chairman: Can you, Mike?

Mr. Breaugh: It is all resolved.

Mr. Chairman: Is it? Well, tell us, for goodness' sake.

Mr. Breaugh: You cannot put that kind of stuff in Hansard.

4:50 p.m.

Mr. Chairman: As a matter of fact, what's he doing here today?

So that should be informal? All right.

What dates had we arranged, Mr. Forsyth, for the committee hearings?

Clerk of the Committee: The hearings will go from February 7 to February 14, on agencies, boards and commissions; the week starting February 21 will be on standing orders; and the week of February 28 to March 1, in Washington.

Mr. Chairman: It's a full month.

Mr. Rotenberg: As Mr. Johnson said, if the House is to

return on January 17, and we don't know how long it might be, my guess is that it will be for more than two weeks.

Mr. Chairman: Maybe we can get a commitment from--

Mr. Rotenberg: Mr. Chairman, I have the floor.

Mr. Chairman: Carry on.

Interjections.

Mr. Breaugh: Gee, in our caucus we're lightening up.

Mr. Rotenberg: I would suggest, at this stage, that we postpone the hearings on the agencies, boards and commissions until at least some time in the second or third week of the House sitting, until we find out where we're at.

We cannot have those hearings while the House is sitting, since it is scheduled Tuesday, Wednesday and Thursday. I agree with Mr. Johnson. If we just have three weeks of the House, then come back the next week and go right in through the committee hearings, it's not a good thing to do.

It is my suggestion that we postpone those hearings, at least until we know where we are going. We may postpone them until the summer, then just spend a couple of weeks on procedure.

I really don't know at this stage what we should be doing, but I don't think that we should be firming up a schedule now, starting with February 7, because we may not be available to do it at that time.

Mr. Epp: I understand what the member for Wilson Heights is saying. I don't disagree with him on that. I think we are really saying that perhaps we should defer the decision until the last week or two in January. We would have a better understanding of how long the House is going to sit.

I don't think we should in any way postpone the hearings at this point. If we have to postpone them, it's much easier to postpone them until a later date than to reschedule them. I think they should remain scheduled.

The other thing that I think we should look at, and I know that the House leaders are going to meet on January 4 in this respect, is procedures. I don't think the clerk indicated when we had slotted any time for procedures.

Clerk of the Committee: One week, the week of February 21.

Mr. Epp: February 21 to 25. Okay, so at least we can use that week for procedures, and maybe it will warm us up.

Mr. Chairman: You mean, even if the House is sitting?

Mr. Epp: No, not if the House is sitting. It is very difficult to get continuous time for that.

With all respect, I think if we are going to deal with procedures, we should have continuous time to do so, rather than two hours here and three hours there, and so forth. We should do this over a period.

What I am suggesting is that we should leave everything scheduled the way it is, and we can decide on changes a little later on if there are changes to be made.

Interjections.

Mr. Rotenberg: Everything is tentative, depending on what happens in the House in January.

Mr. Epp: Yes, but I wouldn't want anyone to cancel anything, and then find out later on that we want to go ahead with it.

Mr. Chairman: What about notice? John, how much notice do these people need?

Mr. Charlton: We're going to be in a position to give them at least a week's notice of cancellations.

Mr. Chairman: Yes.

Clerk of the Committee: I would point out one thing. There are two people, the chairman of the Criminal Injuries Compensation Board and the chairman of the Cancer Treatment and Research Foundation, who have both indicated that they are going to be away at the end of February. There might be some problem trying to reschedule to those dates, and maybe the first part of March.

Mr. Epp: But according to the schedule, they will be okay, will they?

Clerk of the Committee: As it is now, yes.

Mr. Treleaven: I should like to speak to that. I can understand what Mr. Epp is saying about leaving what is tentatively on the books.

However, I am opposed to coming back on January 17, sitting through into February, and then immediately turning around and saying: "Okay, away we go on four weeks of hearings."

We are into March, and, hey, I've got a constituency back there. I have no intention of spending the winter in Toronto. I spent the whole fall and since September 1 down here, in committee and so on. I have no intention of spending this February.

If we come back in January, I just do not want to be back here, under any circumstances, on ABCs in February, period.

Mr. Chairman: You gentlemen, representatives of the Liberal and New Democratic Parties on the committee, do not have any comment about the possibility of the session going into February? You are not able to comment on that?

Mr. Breaugh: The main difficulty that everyone is having right now is that we have no firm idea of anything other than the fact that the House will be recalled on January 17. I am told that there is a short list of some 12 pieces of legislation and a couple of estimates that have to be dealt with. It would appear on the surface that there are probably 10 days to two weeks of sessions to be held.

The difficulty I have with messing with the schedule now is that when you begin the process, it's incredibly awkward and hurried. I think I would concur with the idea that the schedule should be left as it is.

I would suggest that when the House does reconvene we will have to take a look at it again. Probably the most sensible thing is that, if it appears we're running on into February, we should take a week or so of them and put them over until the fall.

I appreciate that a lot of people have spent more time here than they wanted to this fall. I'm not sure that we can work the committees around the individual members' personal schedules about where they would like to be at any given moment in time.

There are staff reports that are being prepared now. The agencies are preparing themselves for a review. If there are individual members who have other matters that they would prefer to attend to, perhaps they could see their whips and get a substitution in here for those few days.

It doesn't cause a major problem for me, even if you were to reconvene the Legislature on January 17 and run straight through. If I run into difficulty where I can't be present, I can always get someone from the caucus to substitute.

I would think it's a little dicey to start cancelling and moving these things around at this point. I think you have to leave them as they are, and after we've been here for a week or so, take a look at it.

If it's necessary to reschedule until the fall, we can do it then. I don't think it makes that dramatic a difference to anybody.

Mr. Chairman: We should remember that one thing we usually do, unless we follow the practice of the federal House--I would think that there is always some sort of an hiatus between proroguing and a new session.

Mr. Breaugh: Yes.

Mr. Chairman: Whether it's a week or 10 days or two weeks, I don't know. It may be hard to fit in agencies, boards and commissions during that period. I'm sure they'll work around the

school break, for example. I can see a week before and a week after the midterm break, or something like that, happening.

Mr. Breaugh: It was my understanding that what is being proposed here is a short session of a couple of weeks' duration. This will mean that the new spring session will get backed up somewhat, because of necessity there will have to be a break of a couple of months between the end of this session, if it ever happens, and the beginning of the next one.

I would anticipate that there will be some room to make some adjustments if you have to.

Mr. Charlton: I can concur with what Mr. Epp has proposed. I have no problem at all in dealing with the business we have scheduled. If, for some reason, the House sits longer than two weeks, and we find we have to then cancel or postpone until September those hearings on the agencies, boards and commissions, so be it.

If the House is going to sit from January 17 until January 30, or even up till February 4, I have no problem with coming back and doing those two weeks of agency reviews.

Mr. Chairman: What we can do, Jack, if this is fair: say we would probably sit on Thursday, January 20, in any event. Our committee would meet Thursday morning on January 20. At that point, we would probably have a pretty good idea of what is in store for that session, an idea of how long it may last. We can make a decision that week.

Mr. J. M. Johnson: The only suggestion I had, Mr. Chairman, was that February 7, 8, 9 and 10 are the problem days. Brian talks about coming back to the sitting on February 4, and coming back on February 7. You can, but I sure am not.

Mr. Breaugh: All of us are going to run into that problem.

Mr. J. M. Johnson: The next week goes to Tuesday, February 15. That, to me, is reasonable. If we are here two or three weeks in January or the first of February, I don't think most of us are going to get back for February 7 to 10.

From February 15 on, we're okay. I just wonder if we couldn't take a look at the first four that we've scheduled. If it is going to be a longer time frame after March, we could slot those into the latter part.

Mr. Charlton: That is a decision we can make though.

Mr. J. M. Johnson: Providing it is not inconveniencing any of these people by leaving them on schedule. Could we at least touch base with them and ask them if it is an inconvenience for them to stay on schedule? If they have something else, then we could slot them in at a later date.

Mr. Breaugh: I think it would be wise for John or Smirle

perhaps to contact these people and point out that there may be a problem with this and just to check out their schedules.

Mr. J. M. Johnson: I am only talking about three groups; the eighth, ninth and 10th.

Mr. Rotenberg: Maybe the next week too, you never know. If we came back September 21 for one week--

Mr. Epp: Excuse me, Mr. Chairman. It is just like if you have an appointment scheduled with someone and they cancel it. All of a sudden you have a time slot there and you can do a lot of things you could not do before. You usually do not mind that being cancelled because--

Mr. Rotenberg: We will just give them notice of a possible change in the schedule.

Mr. Epp: I warn you that if you do that too strongly, people might make other plans and all of a sudden they will say, "Look, you told us it was tentative and we are not available now."

I am just trying to caution you not to go overboard on that because then we will be expecting them and they will say, "Well, we really did not know whether you were going to have us or not because you told us we might or might not be there."

Mr. Treleaven: Mr. Chairman, we did not expect to be back here on January 17 in the House either for X number of weeks. This is a unique or unusual year, so I do not think it is really fair for Mike to take a shot that some people might have some things they want to do.

Mr. Chairman: I think that either Smirle or John some time early in January, whenever it is convenient, should say that this situation has arisen but we will be in a better position to let them know about January 20. At that time, we should have a better idea of just what is going to happen, how long it is going to take and we can make our decision then.

Clerk of the Committee: One other matter I will just let you know of is that the Speaker of Nova Scotia, Art Donahoe, and six members of the House of Assembly in Nova Scotia are coming to Toronto on January 10 and 11 to review the estimate procedures in the House. You will be getting an invitation to attend a luncheon on January 11. It will be a working luncheon, I guess, to discuss our estimates procedure and what they are proposing.

Mr. Chairman: Who are they meeting with?

Clerk of the Committee: House leaders, the clerk and the Speaker.

Mr. Chairman: Make a note of that gentlemen, January 11. Anything else? Meeting adjourned.

The committee adjourned at 5:03 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

GENERAL BUSINESS

THURSDAY, JANUARY 20, 1983

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breagh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
MacQuarrie, R. W. (Carleton East PC)
Mancini, R. (Essex South L)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, January 20, 1983

The committee met at 10:17 a.m. in room 151.

GENERAL BUSINESS

Mr. Chairman: We have a quorum, so I call the meeting to order.

I think everyone has a copy of the agenda in front of them. The first item is something new: a trip to Washington, DC, USA.

Smirle, would you like to comment on what communication you have had down there, and what reply, if any, you have had to your attempts to make a schedule?

Clerk of the Committee: I had a response late last year from the director of the congressional research service, Mr. Gude. He is willing to set up meetings with staff for us for one day. If we want to proceed with it, he suggested we should contact the Canadian ambassador for meetings between politicians on the hill.

Interjection: Do you have the congressional research--

Clerk of the Committee: No. I have not done that. The congressional research service did not want to proceed and set up those kinds of meetings. They thought we should go through the embassy.

Mr. Chairman: As you know, there has been a great rumour mill on this whole trip ever since we adjourned last December. There is a general feeling within our own caucus that, because of the restraint program and because of the controversy and furore that surrounded Bill 179, we should exercise the same type of restraint.

There is a general policy, as far as the government and the cabinet is concerned, that only very essential travel is being encouraged or allowed. No other committees of which I am aware plan any trips of any consequence, certainly not out of the country. I feel, and I am sure members of our caucus feel, that we could be subject to substantial criticism if a dozen or so of us all moved down to Washington for three or four days. As you know, this committee--though not the present members of the committee--visited Washington a few years ago.

I am open to any discussion or comment about it. I just feel that the reaction to Bill 179 is not over. I do not have to tell you, as members of the Legislature, what reaction you have had from your constituents, particularly those affected by our legislation. In the light of all this, I personally feel it would be a good idea, at least at this time, to postpone plans for the Washington trip.

Are there any other comments on that?

Mr. J. M. Johnson: I concur with the comments you made. As a member of this committee, I too would like to see the trip postponed until a later date at least. I am not sure of the time frame, but we should definitely not go this spring.

Mr. Edighoffer: Mr. Chairman, I have not really discussed this with my colleagues this year. However, in 1982 the matter was brought up before our caucus. Our House leader, who is on the Board of Internal Economy, always brings these matters up and asks for our assistance.

I remember, if I recall correctly, that we did get approval, but it was not really full approval. There seemed to be some dissension in the caucus, and many felt this would not be the appropriate time, so I am quite sure we could go along with postponing it.

Mr. Chairman: Is there any other comment on that?

Mr. Epp: There is obviously consensus that we should postpone the trip. Have you got another schedule for that particular week? Are there other hearings that you want to hold, or is there something else? What was your intention?

Mr. Mancini: I think we should ask Dennis Timbrell to give us a full report on his trip to Japan.

Mr. Chairman: As you know, on the second item on this agenda we are going to be talking about dates of hearings for agency review. We do not have any more definite information than we had at our last meeting in December. It depends on the current sitting of the Legislature. If that damned boiler is not repaired, we may not do anything this week, so that sort of pushes everything back.

Tentatively, the hearings for agency review start on February 7. Then we go to February 8, 9 and 10, and we are back again on February 15, 16, 17 and 18. Then on February 24 and 25 there is a tentative schedule that the deputy clerk of British Columbia will be in Toronto and will meet with the committee.

Later on, we shall have some discussion about the chairman of the federal committee on standing procedures in Ottawa and one or two of his staff. As you know, they have just brought in some new rules that are being used in the House of Commons on a trial basis. We would want that person to come here some time in February.

In the light of the uncertainties surrounding the current sittings of the House, and when they may wind up, I would not worry, unless there is other business, about filling the week of February 28. We may, for example, use that week to deal with agencies that we didn't have time for in the first week of February or something.

Mr. Mancini: I have a question about the agencies, Mr.

Chairman, if you are finished. Considering putting forward the tentative schedule that you have, I was wondering if we had come to any kind of resolution concerning the matter of the Law Society of Upper Canada.

Mr. Chairman: As far as we are concerned, they have been requested to attend and that is the way we have left it.

Clerk of the Committee: If I can just add a couple of things. I spoke to Mr. Bowlby's assistant and they have requested another copy of the questionnaire to complete. They mislaid the first copy.

I spoke to the Attorney General's executive assistant and asked them to complete their questionnaire and return it to us. He said they wanted to review it again with the new Deputy Attorney General and that if there is any further correspondence they will be in touch with us.

Mr. Mancini: That is very interesting.

On a lighter note, Mr. Chairman, if we have an extra day at the end of the month, do you think we can ask the Honourable Dennis Timbrell to come in and give us a slide presentation of his trip to Japan?

Mr. Chairman: Did he go to Japan? I thought that was Trudeau.

Mr. Watson: The products sold, compared to money spent, would stack up against Trudeau's trip any day.

Mr. Chairman: Gentlemen, is it agreed that we will postpone our plans for the trip to Washington? Is that agreed? All right.

Getting into item 2 then, I do not know if anybody has any comments regarding the schedule I mentioned. As I said, it starts on February 7. Do you want to leave it the way it is in the hope that the current session will have prorogued by that time?

I think there was a general feeling by the members of the committee that we did not want to have these hearings while the House was in session, and I can understand that. I do not think you can take a Thursday morning or a few hours on Thursday afternoon and appropriately deal with these things. We can play it by ear and the people we have coming in the week of February 7 may be the people we would ask to come back on the week of February 28. Any comments on that?

Mr. J. M. Johnson: It is my understanding that we will be here at least four weeks. The House will be sitting during the week of February 7. If we are here four weeks, then we finish, hopefully, about February 11. Do we want to immediately start into committee work the next week?

Mr. Chairman: If you listened to those ads over CFRB this morning, Jack, I think we will be here until July.

Mr. J. M. Johnson: We'll be lucky if we get out in July.

Mr. Epp: I do not know how long we are going to be here. About two days ago I saw in an article in the Toronto Star that the government House leader said that although a number of things had not been firmed up, as far as he was concerned, we were not going to be here any longer than three weeks. That would mean we could start with the committees after the first week in February. I can only base it on what I have read in the newspaper. I believed the government House leader, but now I do not know.

10:30 a.m.

Mr. J. M. Johnson: You believed the Star, not the House leader. He did not tell you that.

Mr. Chairman: Jack, your comment would take us to about February 11?

Mr. J. M. Johnson: Yes, at the minimum.

Mr. Chairman: So we would have those first three items postponed until some later time. Is there much problem mechanically or logistically in doing that, Mr. Clerk?

Clerk of the Committee: There could be a problem with the Criminal Injuries Compensation Board because the chairman may be away at that point.

Mr. Breaugh: Is he allowed to travel?

Mr. Chairman: I think he is going away on February 18. Didn't he say that?

Clerk of the Committee: He is away right now too.

Mr. Watson: I think we would have to consider postponing some of these agencies until next summer. A month of extra time, or whatever there is going to be, of sitting in the House here has disarranged some of the members' schedules. I don't think these things are that urgent and of pressing importance that a lot of the other things that are going on out in Ontario have to be set aside for them.

I think the agencies, boards and commission hearings were set up at a time when it was considered the House would have prorogued before Christmas. That has not happened. I am a little bit concerned about the fact that you are going to try and rearrange them all and have them all within three weeks or something after we prorogue here when no one knows when we are going to prorogue.

Mr. Mancini: Jack felt we were going to be here three weeks. Did you not say that?

Mr. J. M. Johnson: Four weeks minimum, I said.

Mr. Mancini: Where do you get your information?

Mr. Watson: We listened to the Minister of Community and Social Services (Mr. Drea) the other night. We listened to the same speech we have heard many times. We heard it twice. Are we going to hear that again?

Mr. Mancini: You know none of us here has any power over those members who wish to give these speeches, but I am still not sure--

Mr. Watson: I'm not so sure about that.

Mr. Mancini: Possibly you are right, I don't know, but I am just not sure, Jack, how you come to the conclusion that we are going to be here four weeks. Some members think differently.

Mr. Chairman: Do you think it will be less, Remo?

Mr. Mancini: Yes, I thought so originally. I could be wrong. I still can't see why we cannot have House sittings on Wednesday when we come back for these special sessions.

We should discuss this with our own House leaders back in our own caucuses. This is not a matter for our committee. It is just maybe something for us to think about when we go back to our own caucuses.

Mr. Chairman: In the light of Mr. Watson's comments, do you want to leave it until the summer or do you want to postpone the first week of hearings which cover the Criminal Injuries Compensation Board, the Ontario Status of Women Council and the Ontario Manpower Commission?

If we adjourn on February 11, we are right back here the next week, are we not? What about early March? Is it fair to say, Jack, that if this current House session does not wind up until sometime in the middle of February, that the House may come back for a new session a little later than usual, for example, early April or something like that?

Mr. J. M. Johnson: That would be my assessment.

Mr. Breaugh: Would it make sense though, Mr. Chairman, to leave the schedule as it is until we have a clearer idea? The problem may resolve itself. The House may finish its business within three or four weeks and decide that we will not be back in session until April or May. In that case, it is a pretty simple matter to take three weeks of hearings and reschedule them.

If you say we might be here four weeks and we take the first week and move it, and then next week the House leaders decide we will only be here three weeks, we then have to move it back. Why do we just not wait until we have a clear indication from the House leaders as to how long this session will last and when the Legislature will be recalled and then make a decision about when these hearings will proceed?

Mr. Watson: I do not object to that approach. To make it

clear where I'm coming from, I don't want to have this session end on Friday and then have to come back here for committee meetings and then for the justice committee, and then come back in here for the new session.

Maybe I would get sympathy in this committee, because I think a lot of the members live a considerable distance from Toronto. Doggone it, you can't go home to a meeting at night during the week. I have a lot of meetings in my area that I want to go to.

Mr. Breaugh: I think you ought to. I don't want you here now.

Mr. Watson: When the House is not sitting I'm not going to spend all of the time here in Toronto.

Mr. Breaugh: That's a legitimate argument, and I think the only way we can proceed from here is to wait until the House leaders have got a schedule laid down and we're all aware of what it will be. Then we will plan in terms of that.

Mr. Chairman: Are they going to do that?

Mr. J. M. Johnson: Mr. Chairman, that is going to happen within the hour.

Mr. Chairman: Is it?

Mr. J. M. Johnson: Yes, so there is no problem there.

Mr. Chairman: Within the hour? It may be before we adjourn today.

Mr. J. M. Johnson: They meet at 11 o'clock this morning, and I understand they will be presented with a schedule. If they accept it, then--

Mr. Breaugh: Why don't we leave this decision until next week, when we have a clear idea of how long this one is going to be and when we will be recalled? We can just plan it that way.

Mr. Chairman: Is it agreeable to leave it until next week? All right.

The next item is the invitation to the chairman and vice-chairman of the special committee of the House of Commons on standing orders and procedures to attend a sitting of our committee. As you know, gentlemen, that committee has made some changes and some recommendations that have been accepted by the House of Commons, at least on a trial basis. They were implemented last Monday.

There are a number of changes as to length of speeches, the times of sittings during the day, evening sittings and things of that nature. I am sort of surprised at the speed of business up there, but as a result of the bell-ringing session there was an

unusually swift consensus within that all-party committee. They've got them in place as of now.

I think it would be helpful to have the chairman and vice-chairman of that committee here, and talk to an Ottawa MP. I am sure there are a number of questions about getting consent and implementing it. Is there any particular time? I think these people could probably attend one of our Thursday morning sittings, if that's agreeable, whenever it's convenient for them.

Mr. Treleaven: I would suggest that it is useful and we're probably going to use that information at some time in the not too distant future. I would suggest that we try to get these people in as soon as possible. If you leave it--Mike is grinning; It's nothing Machiavellian, just straight common sense and logic. We could find ourselves having to make some changes in the standing orders and then we would be scrambling to try to get these guys down.

I would say we have time now. The only thing we know for sure is the next two weeks out of the next three months. We don't want to waste three months, so I would say get them here now.

Mr. Mancini: Why don't you tell us now what you have in mind and we'll get back to work?

Mr. Treleaven: Gathering more information inside my brain to enlarge it so I can intelligently represent my constituents on this committee.

Mr. Lane: Mr. Chairman, I think it's important that we have these guys down from Ottawa. I just doubt we would have sufficient time on a Thursday morning to get the information we would like to get from them. Maybe we could schedule another meeting in the afternoon or something.

Why not look at the week of January 28 and slot them in there, if that would be convenient for them? We haven't got anything in there. Obviously, we would be out of here before then. That might be a good time to have them.

10:40 a.m.

Mr. Watson: I suggest we go ahead and get them as soon as possible. In some respects, the public thinks we're on those rules now. I've been quite surprised that people say, when you sit in the evenings, "You know, you don't have to sit in the evenings any more." As far as the public is concerned, you get painted with that, whether you like it or not. The same thing happened with the salaries. I get a little up tight about that.

Mr. Lane: I would love to get those salaries.

Mr. Chairman: I am sure, Andy, when you walk down the street in Chatham on a Saturday morning a lot of people ask you, "How are things in Ottawa?" Right?

Mr. Lane: Even on the great Manitoulin Island they ask me that.

Mr. Watson: When the local member from our area is making as much as the Premier of this province, I think things are out of whack.

Mr. J. M. Johnson: Since the House in Ottawa has just started this and it's on a trial basis for a year, I don't see the urgency of it. We've been operating under the same rules for many years. I would sooner see us carry on, as far as the sittings go, with the same hours we are on now.

Let Ottawa experiment. See how it works out in Ottawa, and about a year from now call them in and ask them how it went. Ask them what's happened when they have finished conducting the experiment.

Mr. Chairman: Jack, we're not going to do anything that's going to affect our current session of the House and we probably won't do anything to affect the next session of the House. I just feel if we're going to go ahead and set up this three-man committee we've talked about--we've written these letters asking for comments from the party leaders, from members of the Legislature, from the House leaders and the Premier (Mr. Davis) and everything like that--

Mr. Breaugh: And Mr. Breaugh.

Mr. Chairman: Yes, we want to get this thing under way. I think one of the preliminary things we should do is get the information from the committee chairmen as to why these rules have been implemented, what was the general discussion at the committee, what changes they are recommending and what their future plans are.

From that, we can go ahead this session, this winter and this spring, to make some recommendations of our own. We can either accept or reject some of the Ottawa proposals which may not be appropriate here. A year from now, I hope we have some recommendations that are before the House leaders to be discussed in the Legislature.

Mr. J. M. Johnson: That was the point I was trying to make. Since Ottawa has set out on a year's trial basis for its new system, why in heaven's name do we have to go under a trial basis as well?

There is nothing the matter with having the committee come and talk to this committee for information, but it seems premature to recommend we also make changes in the same year. We could wait until they've had their year, see how it works out in Ottawa, see how satisfied they are with it and then make some decisions.

Mr. Chairman: Do you mean to say you want us to wait a year before we go ahead with any rule changes here?

Mr. J. M. Johnson: No, not all changes, just some of the changes in the scheduling as Ottawa has.

Mr. Chairman: They've done more than that.

Mr. J. M. Johnson: All I'm saying is that since we've lived with these things for so long, why can't we gain the benefits from the experience that Ottawa is going through instead of also getting into the same area?

Mr. Chairman: Jack, I'm confused. Your boss has been bugging the hell out of us because we're not doing anything. I'm getting sick and tired of hearing about why don't we do something about rule changes, length of speeches and voting procedures and everything.

Mr. Breaugh: It's sitting on the Order Paper now.

Mr. Chairman: We should get at that. We've got a mandate to do that.

Mr. Mancini: I think it's up to the House.

Mr. Breaugh: We have four reports from this committee sitting on the Order Paper now. Three of them deal with rule changes. The paperwork has been done here. What isn't happening here are the decisions to actually implement the changes. I understand that's under way.

I think it would be useful to invite, at their convenience--it doesn't have to be a Thursday morning meeting either--a couple of people from the federal committee to meet with us and discuss how they went about--not writing up what the proposals might be, but actually getting the consensus to make the changes.

Mr. Chairman: Right.

Mr. Breaugh: It would be useful for this committee to have a little chat with them, whether that's a Thursday morning, or if it's not convenient for them to do that, at some other time.

The other thing I would like to suggest is I think it would be useful in a little while--not within the next three or four weeks but before we begin again--to have some of us go down there for a day or a couple of days to talk, not to the members of the committee but to other members of the Commons.

Mr. Chairman: Perhaps the House leaders.

Mr. Breaugh: I am not really so concerned about House leaders and the people who wrote the changes, or the Speaker or people like that; I would like to talk to some of the ordinary members about whether this change has made any difference to them at all and I would like that to be not in a very formal way as well.

It could be a formal exchange by this committee as a whole,

or just one from each party who goes down there for a couple of days and talks to their members to get some feeling about whether anyone there feels that the rule changes are making a difference or even have the potential to make a difference. It could be a formal set of meetings or not, but I would be content with just some of us going down there on our own. Maybe Smirle Forsyth could assist us in setting up some meetings.

Perhaps if we took one from each caucus, we would have a chance to get some feeling for what each of the caucuses is thinking and talking about.

Mr. J. M. Johnson: It makes sense to me--

Mr. Eichmanis: Tying in with Mr. Johnson's comments, something like that would be better maybe in the fall when they have had a chance to--

Mr. Breaugh: I am not thinking of a grand analysis of whether this thing is working or not. I would like to get some feeling, after they have been at it for a month or so, whether ordinary members feel that this is making any difference to them.

I would like to get some sense, very early on, of whether they even feel there is the potential there. A year from now we may all sit down and say this was a wonderful idea that didn't go anywhere and didn't do anything for anybody, but in large measure, that will depend on people's attitudes. The way to find that out is early on.

Mr. Epp: Mr. Chairman, there are two things. First of all, I agree with what Mr. Breaugh has to say. I would be very much interested in doing that and I think maybe the appropriate time would be towards the latter part of February. The time that we had already scheduled to go to Washington might be the time to put in a few days.

I would not necessarily limit it to one person from each party. In order to build a better consensus in this committee, I think it might be helpful for more than one person from each party to go down. I would think that anyone who wants to go down could go down. Mr. Forsyth is quite capable, together with your excellent guidance, Mr. Chairman, of making those arrangements.

Second, I was just wondering what had become of the meeting that we spoke of here late last year, which was not that long ago, with respect to the three members, one member from each party, together with yourself, Mr. Chairman, meeting with the House leaders with respect to getting some kind of impetus built into making rule changes. I think all of us are of the strong opinion that we should make rule changes, but we were not sure about them.

As Mr. Breaugh has indicated, as Mr. Johnson has concurred, and as others have indicated from time to time--Mr. Mancini, Mr. Edighoffer, without mentioning everyone, we have to get going on this thing.

We have the reports; we want to do some more studying with

respect to the changes in Ottawa. I am just wondering what is happening with respect to that meeting and getting some kind of go-ahead by the House leaders so that we are not wasting our time here with drawing up reports and nothing happening at the end.

Mr. Chairman: What has happened is that, as a result of the discussion at the meeting in December--I think it was the last meeting--the request went out to the House leaders. Their reaction was to hold a meeting. I understand that they held a meeting early in January.

Mr. Breaugh: Their meetings are better than our meetings.

Mr. Chairman: Yes. They probably meet at the Albany Club or something. My information is that the three of them separately had indicated from discussions with members of their caucus, I would assume, how they feel. It has been thrown on the table and kicked around and they plan to have more meetings on how they feel and see if they can resolve some of the points we have asked them to consider.

10:50 a.m.

I do not see anything the matter with that. Rather than singularly submitting comments to us, it would be very helpful if we can get a consensus from the three House leaders of some degree, at least to tell us what they agree on and indicate what they do not agree on. If we can have that, a small committee such as you talked about of three persons from this committee can then meet with them after they have had one or two meetings and come back and report to this committee.

I think it is important--Hugh, you might be able to help me on this--that those House leaders have a consensus of their caucuses, a general idea of their caucuses. I am sure they will probably do that. For example, I am sure Elie Martel will go back to his caucus and say, "This is what Mr. Nixon and Mr. Wells are thinking about on proposed rule changes.

Mr. Mancini: He won't put it quite like that.

Mr. Chairman: Something like that. Then it is to be hoped they will have another meeting and will tell us on what there is some agreement, little agreement or no agreement. Then this small committee will, I hope, meet with them and eventually come back to this committee and report.

As you know, the clerk has drafted letters over my signature, as well as the signatures of committee chairmen, to the leaders of the parties and to many of the members of the Legislature--a letter went out to every member, as far as I know--asking for comments on reforming the standing orders and practices of the House.

I have had letters back from Mr. Rae and Mr. Peterson, also from some private members--not too too many. In any event, some of their letters have indicated specifically sections they wanted changed. The important thing is the letters all agree--no

question, there is a consensus--that there should be rule changes. That is encouraging from our point of view.

Mr. J. M. Johnson: Mr. Chairman, what about the feasibility of using the time slot for the Washington trip to go to Ottawa, as Mike Breaugh suggested? My proposal would be that we invite the chairman and vice-chairman of the special committee of the House of Commons on standing orders, as per your suggestion, to come on Tuesday, March 1, to talk to us, and then arrange for a flight to Ottawa that evening, spend Wednesday and Thursday in Ottawa and come home Thursday night or Friday morning.

Mr. Chairman: You don't want to spend a weekend in Ottawa?

Mr. J. M. Johnson: For the first day each caucus could meet with their same caucus--the Conservative members could meet with our Conservative members in Ottawa and each party could do the same--possibly on the Wednesday. On the Thursday we could meet with an all-party committee as a party. We could then sense the feelings of satisfaction or dissatisfaction from our party members and also the feelings of members at Ottawa whether they like the changes and if they have any changes that would work for our system.

Mr. Breaugh: Your caucus meetings are Tuesday mornings in Ottawa. Is that right?

Mr. Chairman: I don't know.

Mr. Breaugh: I will tell you what I have done on a couple of occasions which I thought was rather useful. I attended a federal caucus meeting. For one thing, it cheers you up that yours is not the only stupid group in the world, but it is useful because you get a chance to meet all the members who are in the same place at the same time.

Mr. J. M. Johnson: What day, Mike?

Mr. Breaugh: I believe it is Tuesday morning. I am not sure when their caucus meeting is, but I believe they are all on the same day and I think it is a Tuesday. But whatever day it might be, one of the things that might be useful is to try to get there on a day when they are having a caucus meeting and see in advance if we would be received warmly and just go to one of their caucus meetings.

Mr. J. M. Johnson: I don't think they would invite us into their caucus.

Mr. Breaugh: I will talk to Peter Worthington and see if I can get a court order to let you in.

Mr. Mancini: I just want to make several points. I think, in general, I can agree with some parts of what all members have said concerning the review of the rules and possible recommendations to the House leaders.

As Mike pointed out, we do have three reports that are sitting on a shelf gathering dust. I think it would be advantageous for all of us possibly if our researcher brought us up to date on what we have recommended in the past so we know where we stand right now. We do not want to spend time reinventing the wheel if we have already recommended something in a report we did a year or a year and a half ago. That will bring us up to date. That is number one.

Number two, in order to have rule changes which would make everyone in the House feel comfortable, we pretty well are going to have to have general concurrence of all the parties. Realistically speaking, from what I have seen in this parliament the last couple of years, a lot of that has not taken place. Several precedents were established in the minority government from 1977 to 1981 by Speaker Stokes and they were immediately overturned and eliminated by Speaker Turner.

I am not saying that Speaker Turner was wrong in what he did. I am saying that he did it without the concurrence of the House or its members and we had got accustomed to doing some of those things between 1977 and 1981.

Mr. Chairman: Rule changes?

Mr. Mancini: Yes. one of the most important I feel during question period was the ability of the members to redirect questions to the cabinet ministers. I felt that added a lot of dynamism to the question period and it had been done in the House of Commons and still is, up to this point anyway. There was that in particular and a couple of other matters. We went into great length about whether or not we should have TV and the members' services committee discussed that for a long time too. We seem to be at a dead end there.

Concerning the letter, Mr. Chairman, that you had sent to all the members for rule changes, I have given consideration to responding, but I felt it would be more appropriate if I put forth my views here before the full members of the committee. As you can see, there is a lot of things that affect these rule changes and there is going to be different points of view personally and different points of view politically. The government party has a large majority and it probably can institute any rule changes it wants.

What I am trying to say is that I don't want to get into some kind of charade where we are all going to pretend that we are going to review the rules and make a dozen or 15 recommendations and then, by happenstance, the ones approved that are readily acceptable to the government take place or are put into the standing orders. If that happens then we are going to run into some of the difficulties that took place in Ottawa before the bells started to ring and all that kind of stuff and it is just going to make the rest of this parliament more miserable than the first two years have been, and the first two years have really not been all that pleasant.

As far as the bottom line is concerned, I have to agree with

Jack Johnson. It is a little bit premature to meet with the people from Ottawa to discuss how well their rule changes are going. I believe we should keep that for the fall sitting. We will not be as pressed for time. Right now we don't even know what our schedule is. We don't know when we are adjourning. We don't know when we are coming back for the spring session.

Andy Watson made a good point; we may be even sitting early into the summer and we do have other constituency matters that we have to take into consideration. I do not think at this particular time it is appropriate for us to go to Ottawa or to bring some people from Ottawa down to discuss rule changes. I think the fall would be a more appropriate time.

As far as the House leaders are concerned, that is a different matter altogether. Sure, the House leaders meet and they have their own pet peeves about what the rules should be and should not be, and we probably have three of the ablest members in the House sitting as House leaders, at least as far as experience and parliamentary tradition are concerned.

11 a.m.

All in all, I still think it is our job, as the procedural affairs committee, with a good cross-section of members, some with experience and some new members and with different interests, to make our proposals to the procedural affairs committee and to our caucuses. I am very hesitant about having the situation reversed and having them more or less, not instructing us but giving us firm recommendations as to what they see should be done. I don't think that is what we are here for. I think the process is the exact opposite.

Generally, those are my views about the review of the rule changes. I don't know where the pressure is coming from or who is putting on the pressure all of a sudden to jump into this right now and have rule changes ready for the House leaders or for the leaders of the parties. I think we should methodically review what we have done, meet with the people in Ottawa in the fall, and then hopefully for the October sitting have a firm set of recommendations to put before the House, thereby having accomplished our job and putting the responsibility for the passage of our recommendations on the Legislature.

Mr. Chairman: Does anyone else have comments?

Mr. Treleaven: I will put a motion when the discussion is through as to the spring session.

Mr. Breaugh: I would just like to put in my own one little note of caution here.

Unlike Mr. Mancini, I feel that things are moving slightly faster than that and I will tell you what my concern is. I appreciate that the House leaders have a perspective on it that ordinary members don't have. I am really reluctant to sit back and watch what I think is going to happen.

The House leaders are going to make up their minds, the three of them on their own, on what they are going to do and the rest of that is going to come back as a fait accompli and we are going to live with it. I just want to put in my oar that I object to that kind of a process.

I appreciate that the House leaders each operate with their caucuses in different ways. In ours, Elie has been back to the caucus with what position our party ought to take and what his personal position ought to be and we have had at least a first round of that. I am not sure that the other House leaders have done that, but I would just like it on the record that I believe this committee had done a lot of work. We have put the paper together and we have put those reports in there. That part of it is done.

The House leaders are beginning now to make those initial bargaining procedures happen. The members have at least had a chance, whether they choose to or not, to respond to it. Now it seems to me these decisions are liable to get made and get made in rather short order. I am a little concerned that concepts and ideas will come out of the House leaders from their perspective on how the House should operate that none of us have ever seen or heard tell of. I think the chance is certainly there with it to become implemented. I just want to make sure that at least I register my objection.

The purpose of the exercise in that little meeting we had before Christmas was to see that this does not happen in that way, talking about the process. In short, I do not want the House leaders to go away and draw up a new set of rules and come back and say, "This is it." I want the members of this committee, who have spent a lot of time and effort studying this stuff and putting together reports, to have some say in that.

I want the individual members, if it is at all possible, in whatever limited way it is possible, to have their say. I simply wanted to talk about the process. I think it is important that what we suggested just prior to Christmas happens. I just simply urge the chairman of the committee to intervene with the House leaders to see that it does happen.

Mr. J. M. Johnson: You would have no meetings with the House leaders at this time?

Mr. Breaugh: I don't care how formal or informal you want to get. I am simply concerned that the House leaders, as they make these decisions and put forward these proposals, at least take into account the work this committee has done. Otherwise, I think we have done three or four years of work that is going to get ignored.

Mr. Mancini: Mike, with all respect, that is one of the problems I have been hitting at. Here we have been working for a considerable amount of time with the leadership of the chairman to put forward some recommendations that we have tried to hammer out here. Now you are telling us that Elie and Bob Nixon and Tom Wells are just going unilaterally to make the changes they want and they

are going to make decisions and they are going to come to the House or the caucuses and say, "Look, boys, this is what we have been able to hammer out.

Mr. Chairman: This is why, and I think the point Mike is trying to make, by going along with your suggestion, Remo, and waiting, talking about the fall to do things, these fellows are going to go ahead on their own.

Mr. Mancini: The point I am trying to make is, does this committee not carry any weight with the Legislature at all?

Mr. Chairman: Yes, it does.

Mr. Mancini: Then if it does, we have and you have, as chairman, a responsibility to inform the House leaders that we just find what they are doing is not acceptable.

Mr. Chairman: Right. I am sure no one wants to inhibit those House leaders, but I think what we want to do is to make it plain to them that, as a result of our request to them, we want some ideas from them. If they meet, as they did early in January, and meet again, as long as they accept the fact that it comes back here and we implement it, that is fine and that is certainly what will be done.

Just to give you some idea about how I feel and maybe you and the majority might feel this way, there are about four steps here. First of all, I should like to have the chairman and vice-chairman of the House of Commons committee, as suggested in the agenda, come here. I would suggest any time two or three weeks from now, whatever is convenient for these two gentlemen.

They are busy people. Can they come here some time in February and meet with us? I think we can adjust it so that there is no conflict, of course, with other committee meetings. We will ask them if they can come on a Thursday morning. If we do not finish by one o'clock, maybe we can meet them later that afternoon. I am sure they would like to sit in our House in question period and things like that.

Then it has been suggested that right after that, the whole damned committee should take this trip to Ottawa and meet with our respective cauci--is that the right word? That is the way we do it. Then we get together, whether it is over a drink where are staying or back here at another committee meeting and pool what we learned from our respective party members.

Then I think that some time during this period, or after, whatever is convenient, the three people--I think you suggested it would be Hugh, Mike and I--form a sort of subcommittee to meet with the House leaders in a formal way, and we make it plain to them--and I can make it plain to Tom, I have already talked to him about that--that we want to know what they are discussing, what progress they are making, and generally how they are making out with their discussions, and that we want them to report to us and ultimately to our committee. Then when we have all that, I think

we have enough material to have a meeting here and make recommendations to the Legislature.

Mr. Mancini: When are you going to do all this?

Mr. Chairman: I am talking about the fact that this goes on into April or May before we probably get around to consider the recommendations.

Mr. Epp: Mr. Chairman, I think you have outlined things fairly clearly. I have no objection to that and I would so move.

Mr. Chairman: Is there a seconder to that?

Mr. Epp: You do not need one.

Mr. Chairman: All in favour?

Mr. Mancini: Contrary.

Motion agreed to.

Mr. Chairman: We shall ask the clerk to contact that committee chairman and vice-chairman and see when it is convenient for them to come down some time in the next three or four weeks, whatever it is. Also, do we have to go to the Board of Internal Economy now? The money is there.

Mr. J. M. Johnson: No. I understand we had approval for the trip within the continental United States and Canada. For the Washington trip there is no problem, as far as the board goes. So there would not be any problem with Ottawa.

Mr. Chairman: So it is a matter of allocating funds so that, as you suggest, Jack, some time after we meet with the chairman and vice-chairman, you get in touch with the caucus chairman, I guess, or the whips in Ottawa, depending on the day. It is to be hoped they all hold their caucus meetings the same day--that would be convenient--or at least within one or two days of each other.

We will have that meeting in Ottawa. In the meantime, if it is all right for the three of us, I can get together with Hugh and Mike and talk to Tom Wells and say, "When can we meet with you?" Then, when we have all this material put together, John can get something together for a general consensus and come back down with some proposed recommendations. Later on in the spring, some time after the new session commences, we shall have some meat in front of us to make some recommendations.

11:10 a.m.

Mr. J. M. Johnson: George, when we are in Ottawa, would it be feasible to meet with the special committee as well?

Mr. Chairman: Yes, that would be great.

Mr. J. M. Johnson: One day we could meet with our respective caucuses, but could we possibly meet the next day with the whole--

Mr. Chairman: With that committee. Yes, that is something we can talk to the chairman about.

Mr. J. M. Johnson: If we had a week before we went to Ottawa to review our orders, and then when we come back, spend the week to review what transpired in Ottawa, that would give us three weeks right around March 1 that should give us--

Clerk of the Committee: When you are in Ottawa, you will also have the opportunity of sitting in the House and seeing how these rule changes are working.

Mr. Chairman: Yes, particularly the time limit on speeches and the procedure with regard to questions. Those are things that might be very helpful, to see if there are any innibitions there that have affected the ability of speakers to get their points across, and things of that nature. Also, in the light of our proposed schedule for agencies, which we shall deal with next week, we can firm up some dates on these other things.

Clerk of the Committee: May I just ask a question. The chairman has mentioned that the deputy clerk of the Legislature in British Columbia will be in Toronto on February 24 or 25. If the House is not meeting then, and if the committee hasn't anything scheduled, is it the wish of the committee that we have him in for one day? Would you like to meet with him and go over British Columbia rules?

Interjection: It would be very helpful. It would be more effective to go to Victoria, but--

Clerk of the Committee: If you cannot get out to BC, he is at least going to be here for a task force meeting on Friday of that week.

Mr. Chairman: All right, there seems to be a consensus.

Mr. J. M. Johnson: Since the clerk has some rough idea of what we have in mind, he can contact Ottawa and get some answers to some of these questions by the next meeting. Then we could firm up the specific date, couldn't we?

Mr. Chairman: Are we looking at two or three weeks from today, early in February?

Mr. Breaugh: Could I just suggest, if it is possible, for the clerk, the chairman and the research officer to put forward a proposed timetable as to when these meetings might occur?

Mr. Chairman: I am sorry, Mike, I did not hear.

Mr. Breaugh: I am just asking that maybe you, Smirle and John, are in a better position to organize the schedule than the rest of us are.

Mr. Chairman: Yes, we shall have a proposed schedule for you.

Mr. Breaugh: I am simply asking that you put forward a proposed schedule of meetings, exchanges and what not, so we have some concept of what the committee might do, based on what is really possible, rather than what each one of us might think could happen. A lot of it does depend on when people might be available, as opposed to when it is convenient for us.

Mr. Chairman: Depending on the clerk's ability to contact these people in Ottawa, we should have something for you next week.

Gentlemen, I wonder if it might be an idea, before we meet with the chairman and vice-chairman of the special committee of the House of Commons, for us to have a meeting, next Thursday if it is convenient, to go over their amendments to their votes and procedures.

Interjection: Yes, I think that would be useful.

Mr. Chairman: Has everyone got a copy of this?

We shall have extra ones prepared.

Mr. J. M. Johnson: What days are you inviting them?

Mr. Chairman: The earliest would be February 3. I think we should do it while the current House is in session, because I am sure one morning will be adequate. I would think three or four hours would be adequate.

Interjection.

Mr. Chairman: Yes, we will have that date for you next week. In the meantime, if you want to meet next week-- Oh, next week there is something going on out west. Aren't you fellows invited? What's the date next week; January 27? Are any of you fellows going to Winnipeg? Andy is, yes.

We had better not sit next week then. On February 3 we will deal with the votes and procedures and then any time after February 3 we will have our friends from Ottawa come down. Is that all right?

Mr. J. M. Johnson: I don't know. I would sooner see them come on February 24, if possible, and have our committee meet on February 22 and 23 to review their changes and our orders in relation to what they've done. We meet on February 22 and 23, he comes on February 24 and the following week we go to Ottawa. Then the week after we review what transpired in Ottawa.

Mr. Breaugh: The only thing is, Jack, I think you have to get some concept of when they are available. This is not like summoning somebody to come to the committee when it's convenient to us. We are asking people when they might make themselves available to us. I think we have to leave that initiative up to

them. That's why I am proposing that Smirle, George and John come before the committee as soon as they have some idea of when this is possible, put a little schedule together and tell us what is feasible.

There is not much sense in us sitting down and saying, "This is when we would like to do this." They may simply say they can't get there on that date.

Mr. Chairman: Jack, you're calling people back. You are calling Dick Treleaven back from Woodstock and Andy from Chatham when the House probably isn't sitting, to meet with these people for a few hours.

Mr. J. M. Johnson: My point was that we should be concentrating on this and not worrying about the ABCs. If we are going to Ottawa, we should have more than just a few hours to discuss what we're going to Ottawa for.

Mr. Chairman: We would plan two meetings. First, we would have our meeting to deal with their votes and procedures. In other words, there is the substance. We read their transcript and we see their rule changes. Then we have another meeting with the chairman and vice-chairman. Surely to goodness, after those two meetings we are well enough versed to go to Ottawa and conquer Ottawa. Okay?

We will leave it up to Smirle then to see when it's convenient. These fellows may say they can't move out of Ottawa until April or Easter or something. They may tell us that; fine.

I would suggest that we not have a meeting next week because of what's going on in Winnipeg. We might as well meet next to discuss votes and procedures ourselves, on a Thursday morning. I would suggest February 3. Is that all right?

Mr. Breaugh: That's agreeable. The only thing I would ask you to do, if it is possible, is to put out a tentative schedule before the meeting itself. As soon as you have it roughly lined up, perhaps you could just let the members know in writing. We are all trying to juggle schedules about things back home and committee meetings here. Even if the schedule might get changed, it would be useful for us to have a rough idea of when these things might occur.

Mr. Treleaven: We decided before we were going to deal next week with the ABCs. Now we've decided we're not going to have a meeting next week.

Mr. Chairman: That's what I was asking you. As you know, there is a meeting in Winnipeg. Andy won't be here. Frankly, I don't think I'll be here.

Mr. Treleaven: Fair enough, but we already decided we're going to be here next week.

Mr. Chairman: No, we haven't really decided that.

Mr. Treleaven: Yes, it was decided earlier. In your words, we would decide next Thursday what we were going to do with the ABCs. For the sake of argument, I'll make a motion that we dispense with all ABCs this winter session and they be deferred until summer.

Mr. Chairman: Oh, no, that opens the whole thing up again.

11:20 a.m.

Mr. Treleaven: That's fine, but it's on the floor. You can disagree with it.

Mr. Chairman: All right, let's meet next week then, if that's what you're after.

Mr. Treleaven: No, that's not what I'm after. I'm saying you're ambiguous. You're saying meet next week and then not meet.

Mr. Chairman: I realize that, but you will understand why I changed my mind on that.

Mr. Treleaven: Sure.

Mr. Chairman: If there is only one member of this committee away and if you feel that's all right, then we will meet next week.

Mr. Treleaven: No, sir, that has nothing to do with this.

Mr. Epp: To resolve this, is there any reason why we couldn't meet two weeks from today? I agree with Mr. Treleaven that we had agreed earlier to decide this thing next week. However, there seems to be a consensus building that we shouldn't meet next week. I'm not disputing that. I'm not arguing with that point.

Is there any reason why the decisions we were going to make next week could not be postponed one further week? That would resolve what Mr. Treleaven has said, that there is this ambiguity? I'll leave it at that.

Mr. Treleaven: My point is--let's make it once and for all. We are now in the middle of January and we haven't decided about the ABCs. Now it's going to be February 3. I concur with two weeks from now. That's fine, but now we're into February and we're going to decide about the ABCs.

I can see the whole winter gone without any idea as to what we're going to do for the whole time. We're going week to week, and we can't make any schedules, meetings or plans at home. I would like some definition to this.

Mr. Chairman: I can withdraw my suggestion, if you want, that we don't meet next week. I am prepared to meet next week.

Mr. Treleaven: I'm happy to not meet next week.

Mr. Chairman: But you're complaining about it. You're inconsistent.

Mr. Treleaven: No, sir, you've got two motions; meet next week and then don't meet next week. All I'm saying is if you've withdrawn the first, fine, it's two weeks from now. But then let us decide the rest of the winter. We have been going at this for a month now as to what we're going to do about the ABCs. I would like to deal with my constituents and know where I am going to be on a given day over the next two months.

Mr. Chairman: What are the ABCs?

Mr. Treleaven: Agencies, boards and commissions.

Mr. Chairman: I see. I thought they meant the fundamentals.

Mr. Breaugh: I think I understand why your caucus is so vulnerable to dictatorship.

Mr. Chairman: In the light of the fact that we were to have a report next week on the ABCs, because of a meeting this morning with the House leaders--I think you mentioned that, Jack--we will know later on today. Rather than leave that information for two weeks, I would suggest that we go back to the original motion and meet next week. Is that all right? Logistically it would probably be better. That's agreed.

Next week we will do the votes and procedures that have been proposed in the House of Commons. Any other business? We will adjourn. Thank you very much, gentlemen.

The committee adjourned at 11:24 a.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

REVIEW OF PROPOSED AGENDA

REVIEW OF HOUSE OF COMMONS COMMITTEE REPORT

THURSDAY, JANUARY 27, 1983

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
MacQuarrie, R. W. (Carleton East PC)
Mancini, R. (Essex South L)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, January 27, 1983

The committee met at 10:14 a.m. in room 228.

REVIEW OF PROPOSED AGENDA
REVIEW OF HOUSE OF COMMONS COMMITTEE REPORT
(continued)

Mr. Chairman: Okay, gentlemen, we have a quorum. (Inaudible) and also a copy of a proposed agenda for February and March attached to the main agenda.

You will recall that last week we had hoped to have some information today about how long the House may sit during the current session. There was supposed to be a meeting of the House leaders last Thursday or Friday and we might have some more information today. We haven't found anything out; we don't seem to have any more information; these things change from day to day. I was hoping Jack Johnson would be here.

However, in the proposed agenda the first item is a Thursday morning meeting of this committee. You will recall we were going to invite the chairman and vice-chairman of the special committee of the House of Commons to come here. Smirle, is this a date that is open but they are to get back to you, or have you contacted them? What is the story on that?

Clerk of the Committee: The chairman, vice-chairman and clerk of the committee returned from London on Monday, I understand. I tried to reach the clerk this week but he wasn't in. When he phoned yesterday, I was sick. Apparently he is not in this morning, either.

We are trying to see if we can set up something for February 3 or 10, if that is convenient, for Mr. Lefebvre and Mr. Baker and the other vice-chairman. Until I speak to Mr. Stewart today I cannot say anything more.

Mr. Chairman: Okay. Then February 10, which is a week later, we also allow for the chairman and vice-chairman in the event that they cannot attend on the third.

The next item: cancel agency hearings for the weeks of February 7 and 14. I kind of feel that probably, at this stage, we can do that, knowing darn well that the House is going to be sitting the weeks of February 7 and 14. I think there is no sense in prolonging that decision any more.

Mr. Epp: If it doesn't sit, we will take the week off.

Mr. Chairman: Yes. Bill 127 is going to take at least three weeks, I would think; if you go by CFRB, it is maybe three months.

Mr. Epp: Are you going to go ahead with it?

Mr. Chairman: Sure. The Globe and Mail is supporting us.

Mr. Epp: Isn't that good reason to not go ahead with it then?

Mr. Chairman: Anyway, can we get an agreement on that, gentlemen, that the agency reviews we had scheduled for the weeks of February 7 and 14 be cancelled? Okay. So you will notify the appropriate people on that, Smirle.

Clerk of the Committee: When John and I discussed the proposed agenda we put down the week of February 21 as the possible time that we could consider at least three of the agencies. There are at least two chairman, the Criminal Injuries Compensation Board chairman and the chairman of the Ontario Cancer Treatment and Research Foundation, who have made plans to be away and there could be conflicts there. We will have to see who is available for that period and slot them in.

I am just not sure now, based on what is happening in the House, whether the House will be sitting that week or not. I guess what we could do is schedule three tentatively, if that is your wish, and say subject to cancellation if the House is sitting.

Mr. Treleaven: I really think we should go on record that we should not inconvenience anybody in our investigations.

[Laughter]

Interjections.

Mr. Epp: I want you to know that I was inconvenienced by having this meeting this morning, and so was everybody else.

Interjections.

Mr. Treleaven: I had to drive in from Woodstock for this, too.

Interjections.

Mr. Epp: Boy, that's quite an outburst.

Mr. Chairman: What is the committee's pleasure about having meetings considering three agencies only the last week in February?

Interjection: Agreed.

Mr. Watson: Subject to further putting it off.

Mr. Chairman: All right, then.

Mr. Eichmanis: If I could just interject here, if there is some problem with the cancer research foundation and the

Criminal Injuries Compensation Board because the chairmen have other commitments during this period of time, then the three agencies that would be left clear would be the Law Society of Upper Canada, the Ontario Manpower Commission and the Ontario Status of Women Council. Those three would be for sure then.

Mr. Treleaven: Question: is the law society certain? You just said they are certain. Are they all that certain? Have we heard from them?

Mr. Epp: If we start faltering on it, they will, too.

Mr. Eichmanis: The situation now is that they haven't answered the questionnaire, but my research does not depend upon them answering the questionnaire. The question is, when we extend the official invitation do they then refuse? That's where the critical part comes in.

We haven't extended an official invitation for them to appear on a certain date. That would be the cruncher.

Mr. Breaugh: According to Sam Cureatz it would be an honour and a privilege for them to attend and they really ought to; some new, ultra right wing group of lawyers in the House have suggested it would be in their best interest to attend, so I'm sure they'll be here.

Interjections.

Mr. Watson: Have you been talking to Sam again?

Mr. Breaugh: There is a new, subversive group of lawyers that has suddenly formed.

Mr. Treleaven: A group of democrats who wish another voice heard.

Mr. Eichmanis: If it's agreeable to the committee, can we then put down for that week of February 21 to 25, the status of women council, the manpower commission and the law society, subject to further delay?

Mr. Chairman: How complicated is it and how inconvenient is it for everyone concerned, particularly the agencies, to prepare for a review on February 21 and then be told on February 16 or 17, "We don't need you for a month or two"? If we're going to sit in the House until the middle of February at least, do we want to get right into three agencies right after that in February? If you want to do that, fine, or will you be sick and tired of Queen's Park by that point?

Mr. Breaugh: I take it you're talking about three days, Tuesday, Wednesday and Thursday?

Mr. Chairman: Actually, three agencies wouldn't take that long, I wouldn't think.

Mr. Breaugh: I wouldn't have any difficulty with that.

Mr. Chairman: If it's a matter of a couple of days, all right. Let's do it on that basis then.

Jack, I don't know if you were here, but we cancelled the agency hearings we had scheduled for February 7 and 14. Did you hear any more information as to when the House may prorogue?

Mr. J. M. Johnson: No, but there is no possibility before, I would think, February 11 at the earliest, or that week anyway.

Mr. Chairman: Okay, what day is February 25?

Interjection: Friday.

Mr. Chairman: All right, make sure you schedule an agency for a Thursday. Whether we need any more than the day before is questionable. For the status of women council I'm sure we will need half a day at the most.

Clerk of the Committee: If we have half a day we can always use it for giving John instructions on report writing.

Mr. Eichmanis: I might say that in relation to the status of women, Fraser's Edge, which is a television program done by Fraser Kelly--

Mr. Chairman: The Fraser's Edge? Somerset Fraser.

Mr. Eichmanis: --did a program on the status of women council and women's issues. I have been able to obtain a tape from them and I thought maybe it would be a good idea during the briefing session to maybe show you that tape, so you could get an idea of it.

On that tape, Laura Sabia, the former chairman, appears, and then Ms. Sally Barnes appears, and then another woman who is involved in women's issues appears. It's a fairly good piece on the council and women's issues generally.

Mr. Chairman: Okay, so February 25 is definite. On March 1, at what time do we leave for Ottawa in the afternoon?

Clerk of the Committee: Probably late afternoon. This has to be all worked out once I have the discussions with Mr. Stewart, the clerk of the special committee in Ottawa, to see if we can work something out. I wanted to get your approval on this before I get into too-detailed discussions with him.

I propose that we meet on March 1 to have a briefing session before we go.

Mr. J. M. Johnson: What time?

Clerk of the Committee: We would meet in the morning and leave--

Mr. Chairman: No. We would be briefed on procedure. What

do you mean, briefed on our itinerary in Ottawa, or review what we've been doing or what?

Clerk of the Committee: I think it would be a quick review of what's happening up in Ottawa, again.

Mr. Chairman: Depending on the time, we could meet at two o'clock. If we're not leaving until 4:30 or something, maybe an hour is sufficient, isn't it?

Clerk of the Committee: If it's the committee's wish, sure.

Mr. Epp: Let's not take all day to do something we can do in an hour.

Mr. Chairman: Let's meet in Toronto here at 2 p.m. or something. I'm sure an hour, after we have a couple of mornings dealing with the report from Ottawa, should be sufficient. We're on March 2 and 3.

Mr. J. M. Johnson: Will we go from Queen's Park out to the airport together and then come back, so we can leave our cars here?

Clerk of the Committee: Yes.

Mr. Chairman: March 2 and 3 are all tentative, but those sound pretty reasonable.

Mr. Treleaven: As a new member here, would any New Democratic Party members know anything to do in the evenings in Ottawa, after we have been attending committee hearings? Is there anyone who can help us and guide us there?



Mr. Breaugh: They have some of the finest churches and libraries in the nation.

Mr. Treleaven: Are you volunteering to show us some of those, to give us guided tours?

Mr. Breaugh: I would be pleased to show you the entire stained glass collection.

Mr. Treleaven: At no expense to the Legislature, we've got to say, in the light of who just entered the room.

Mr. Breaugh: It's up to you.

Mr. Chairman: Okay, that looks fine. If they have an authors' conference or something in Ottawa it would be interesting to attend that, I would think.

Gentlemen, do you all have a copy of the Votes and Proceedings of the House of Commons of November 5 and December 3? I would suggest that John read a paragraph or two. You can omit the prayers, John. Start on page 9.

Mr. Eichmanis: Page 9, which is part II, recommended experimental changes.

Mr. Chairman: The thick one; page 9, recommended experimental changes.

Mr. Eichmanis: If there is no objection, I'll start reading.

Do you want to have it read or have you read it to the point where you now can discuss it?

Mr. Chairman: Let's read it first. Then if we find it too wordy, as it is in most Houses, maybe you can synopsise it a little bit, John, and deal right with the recommendations.

Mr. Eichmanis: Okay. I'll start reading.

"1. Parliamentary calendar.

"Your committee is of the opinion that a parliamentary session should be planned on the basis of three annual sitting periods, which would ensure reasonable certainty as to the dates and duration of the period during which the House would sit. The three sitting periods would be designated as the fall semester, the winter semester and the spring semester. To ensure the efficient planning of parliamentary business in accordance with this proposed calendar, it is the recommendation of the committee that the government prepare its legislation program before each semester so that the House would know well in advance the nature of the business and the content of the bills it would be asked to deal with.

"Your committee recommends the adoption of the following parliamentary calendar: The fall semester would begin on the first

Monday following Labour Day. The House would adjourn for one week on the Friday preceding November 11. It would continue until the Friday preceding Christmas Day, unless Christmas Day fell on a Saturday or Sunday, in which case the House would adjourn on the preceding Wednesday.

"The winter semester would begin on the fourth Monday following the end of the fall semester. The House would adjourn for the Easter recess on the Wednesday preceding Good Friday.

"The spring semester would begin on the Monday following Easter Monday. The House would adjourn for the summer recess on June 30, or on the preceding Friday if June 30 falls on a Saturday or Sunday.

"On the 10th sitting day before the end of the spring semester a motion could be proposed by any member to extend the hours of sitting to a specific hour during the last 10 sitting days of the spring semester. The motion would be debatable for a maximum of two hours. Your committee recommends that the occasional power conferred on the Speaker, following consultation with the government, to recall the House for a date earlier than that to which it stands adjourned be included in the standing orders.

"The above recommendations would be implemented without prejudice to the royal prerogative of prorogation and dissolution.

"Between 1975 and 1981, the House sat an average of 165 days per year, excluding 1979 and 1980, which were election years. If this parliamentary calendar were adopted, the House would sit approximately 175 days per year.

"The standing orders are amended by adding the following new standing orders:

"2A. When the House meets on a day, or sits after the normal meeting hour on a day, set out in column A, and then adjourns, it shall stand adjourned to the day set out in column B."

I do not know whether you want me to read those columns, but maybe I should. First under column A is: "The Friday preceding Remembrance Day," and under B is: "The second Monday following that Friday."

Second under A: "The Friday preceding Christmas Day or the Wednesday preceding if Christmas Day falls on a Saturday or a Sunday;" and second under B: "The fourth Monday following that Friday or Wednesday."

Third under A: "The Wednesday preceding Good Friday;" and third under B: "The Monday following Easter Monday."

Fourth under A: "June 30 or the Friday preceding if June 30 falls on a Saturday or a Sunday;" and fourth under B: "The Monday following Labour Day."

Standing order 2B: "Whenever the House stands adjourned, if

the Speaker is satisfied, after consultation with the government, that the public interest requires that the House should meet at an earlier time, the Speaker may give notice that being so satisfied the House shall meet, and thereupon the House shall meet to transact its business as if it had been duly adjourned to that time. In the event of the Speaker being unable to act owing to illness or other cause, the Deputy Speaker, the deputy chairman of committees or the assstant deputy chairman of committees shall act in the Speaker's stead for all the purposes of this standing order.

"The standing orders are amended by adding the following new standing order:

"6A.(1) On the 10th sitting day preceding June 30 a motion to extend the hours of a sitting to a specific hour during the last 10 sitting days may be proposed without notice by any member during routine proceedings.

"(2) Not more than two hours after the commencement of proceedings thereon, the Speaker shall put every question necessary to dispose of the said motion."

Do you want to stop there and deal with that?

Mr. Chairman: I do not know whether it is relevant, but I was just thinking that, on the paragraph before, we had some discussion here about the Deputy Speaker performing the duties of the Speaker when the Speaker was not available. I guess that particular section is really only relevant to the question of when the House shall meet, rather than dealing with questions when the House is not in session and just what power the Deputy Speaker has in place of the Speaker, I guess; is that so?

Mr. Eichmanis: It seems to me that the whole question of the parliamentary calendar hinges upon the first paragraph or the second paragraph, where it states that in order for the calendar to work the government has to, in effect, lay out its legislative program prior to each semester. I guess that would be a problem area, whether the government could do so each time with any degree of certainty.

Mr. Chairman: It would be a substantial change in the present practice in any event.

Mr. Watson: This is one of the things that maybe you know or do not know, but it says on the 10th day somebody could make a motion to extend hours. I guess my question is why that specifically has to be the 10th day. What happens if on the eighth day or the fifth day you decided that you were going to need some more time?

What happens around here seems to be that, "We are coming to the end, will we agree to extend it?" This seems to be fairly specific that on the 10th day you must give that notice as to how long you are going to extend the hours.

Mr. Breaugh: I think the intention is that it is kind of

a deadline date, that there is an agreed-upon date when that motion will be put.

Mr. Chairman: It is about that time you will know whether you are going to finish by June 30, then you decide well, we have to sit longer hours to clean up by that date. I think that is the intent of it.

Mr. Breaugh: How do other members feel about the calendar idea? It strikes me that we are in a position now where we are sitting all the time anyway. Why do we not get organized and decide--

I think the problem here is that traditionally the federal House has had longer sessions than we have, but we are getting rapidly to the point where we are matching them, day to day. I would think it would be preferable if I knew ahead of time what--

The thing I find really frustrating is that I do not know where I am going to be next week and what is going to happen. Around certain times of the year when there are a lot of other events, around Christmastime is a good example, you go through that annual charade of taking events in your own constituency on the basis that, "If the House is not sitting I will be there and if it is, I cannot be there," and you run right through often until the day of the event before you really know whether you can or cannot be there. So I am kind of an advocate of the calendar.

Whether we take 175 days or all of this detail or not, I really see considerable advantage just in getting my own time organized, if I knew that we were going to start in September in the first or second week and we would finish at the end of November and we would not be sitting in December, or whatever the dates were. Then we would come back in for another two-month session or three-month session and adjourn for another month and that we would do another session that started in April or May and ran until the end of June or even until the end of July.

It would just be helpful to me to get my time organized if I had a calendar like this, so that I knew when I would be in Queen's Park and when I would be in my constituency. So whatever the details might be of exemptions for holidays or for times when we would not sit, I really do not care too much about what that is. That part of it is kind of pragmatic from my point of view, but I really do like the idea that I would be able to know when I will be in session here, when I will be available to go somewhere else, when I will be available to do constituency events.

I think the calendar idea is a useful one, because it strikes me we have reached the time where we are here anyway most of the time now. Most of the year the House is in session or the committees are working, and so it seems to me to be not a big deal but really a matter of getting our schedule organized. So from that point of view a calendar makes a lot of sense to me.

I am very pragmatic about the number of days that the House would sit. It seems to me you would just ball-park how many days we sat last year or the previous two years and somewhere out of

that strike the median--that that is the number of legislative days we have in a year, try to arrive at a consensus about when the members would have a preference about being in session here as opposed to being at work in their constituency, and work out the details that way. But it would really be a help for me anyway to know.

Mr. Chairman: Just a quick comment. It would appear that in the last few years anyway, the only questionable period when there is some confusion or when there isn't any precedent has been in January and February. The House has been opening in March and there has been some variance in the date in March because of the March break. We have always gone until about the end of June. We have been coming back the day after Thanksgiving and we have been proroguing usually the weekend before Christmas.

10:40 a.m.

The problem this year is that we did not finish our business by that time, so we came back in January. There has been the odd emergency session in February in the last 10 years, but usually from the time we prorogue at Christmas until March the House has not been sitting. That is the area where there is that uncertainty. Without this obsession about proroguing at Christmas, we might consider having to recess at Christmas and come back in February or something, and have a calendar dealing with a date somewhere in mid-winter. Herb, you had a question?

Mr. Epp: I very much like the idea of having a calendar and having some kind of certainty as to when we are going to be sitting. For anybody who is trying to plan some kind of holidays in advance or other business activities, whatever the case may be, it is very difficult with the kind of schedule that we have been having. I also do not like the idea where we are sitting into late June or into July. I would much rather come back earlier in the winter, maybe at the beginning of March or late February, then go through and have some kind of certainty that we are going to get out by mid-June or early June. I think it is often a real waste of time. I personally prefer the spring. It is one of the nicest times of the year, but that is when we are sitting in here and that is when we are rushing through legislation. If we are going to be sitting here, I would much rather have us sit in late February or March.

As you know, a few years ago when we were coming back in the fall, we never knew until maybe the Premier (Mr. Davis) let us know a week or two in advance, maybe three weeks to be generous, and then we would come back some time maybe in mid-October or something of that nature. In the last year or so, I think he has let us know when we were coming back at the end of June. I see no reason why we should not know this in June or maybe a year in advance. The only things that would take precedence over this particular calendar would be if an election were called or if there was an emergency session for some reason or other. I think all members would be in a position to accommodate those things.

Personally, I very much support a calendar of events and, secondly, I do not think we would have to have as many days as

they do federally. As the member for Oshawa (Mr. Breaugh) and the chairman have suggested, to take an average of the days that we have been sitting the last few years and more or less work that into a schedule would be very helpful, without taking in the emergency sessions that we had as a result of the restraint bill that has somewhat shifted our calendar.

Mr. J. M. Johnson: I would be concerned with accepting the likes of the schedule presented by the federal people. One thing I think I am correct on is that they do not vote on Mondays or Fridays.

Mr. Breaugh: That is proposed but has not been settled.

Mr. J. M. Johnson: In other words, you are talking about a three-day week because some of the members certainly will not be in on Monday and Friday. Being our whip, I realize the importance of having members in attendance for quorums etc.

Mr. Chairman: They sit on Wednesday.

Mr. J. M. Johnson: I think the provincial Legislature is different to the federal. I am not sure about the other members, but I certainly have a lot of constituency work. I have 21 municipalities to represent and I cannot do it by being in Toronto constantly. To take the calendar that they have and be here five days a week-- When I leave home Monday I do not get back until Friday. I would much sooner work Tuesday and Thursday nights. When I am here I would like to work and get through so that I would have some time in my riding. For members that live in the city or have a riding to which they can be back in 20 minutes or an hour, it's convenient to have the evenings free. But John Lane--

Mr. Epp: Jack, can I just interrupt here?

Mr. J. M. Johnson: Yes.

Mr. Epp: I wasn't supporting the exact calendar that they have here and I don't think anybody else was. As far as I was concerned, I was talking to the basic principle of having a calendar. If we have a calendar, then we can work out the details later. Those details may not be too different from what we have now, but the principle of having a calendar is what I was addressing my remarks to.

Mr. J. M. Johnson: I would certainly support that. I have been here seven and a half years or so, the same as Mike, but it seemed to me that every year, except in this past year, we came back the day after Thanksgiving. We've really been working from the second week in October through to the third week of December. We have had a fall calendar. The spring has nearly always started about the second week of March. I would go along with having a firmer date schedule.

I prefer to have evening sittings rather than do away with evening sittings and make a five-day week because the five days are not going to materialize. It's three days and the Monday and the Friday are wasted days.

Mr. Breaugh: If I could just interject, what I am really advocating here is, for example, in the fall session I am always confused as to why we come back after Thanksgiving and sit right up until Christmas. Why don't we come back regularly in the first or second week of September and assure that we are adjourning by the beginning of December, so that out of every four months in a season we've got three months that we know are legislative months? Then you know that's the way it's going to be and you can set up your schedule that way. You know you've got a month to do events in your own constituency.

Mr. Chairman: It's probably just a matter of starting earlier in both semesters.

Mr. Breaugh: Yes.

Mr. J. M. Johnson: It isn't going to happen. The problem is that you can determine the starting date, but you can't determine the ending date.

Mr. Breaugh: I think we could.

Mr. J. M. Johnson: You have to have some reason to close off, and Christmas is the reason. If we start here in September, I can assure you we will be here till the same time in December.

Mr. Breaugh: Why?

Mr. J. M. Johnson: Because the legislation flows in proportion to the time allocated, and they will find legislation to fill it up.

Mr. Breaugh: When I am advocating the calendar idea, I am saying that applies to both sides of the House really. The government must get its act together a bit earlier, organize it, and as a member of the opposition, I must recognize that if I want an adjournment date at the beginning of December, I have to work my legislative timetable into that. I know that we can't drag stuff on.

If you go through this report, there are other places in here where you'll see that compromise coming in. On one side we're saying let's get organized and on the other side we're saying that means both sides of the House get their acts together. We know there is a start time and the government has some difficulty perhaps getting its legislation prepared a bit earlier. On the other side of the coin, we're saying to opposition parties, if an adjournment date means anything, if a calendar for a Legislature means anything, that means that the debate will cease by that date. There are two sides to this coin.

Mr. MacQuarrie: I would think that this has to be clearly understood on all sides of the House. It has been expressed a bit differently, but hot air has a tendency to expand to fill the time available to it.

Mr. Breaugh: Exactly.

Mr. MacQuarrie: Sessions can drag on and on and on. If everyone can agree on a cutoff date, unless there are emergency situations developing, I think that if we had definite guidelines as to times of sitting, a calendar would certainly be to everyone's advantage.

Mr. J. M. Johnson: All I'm saying is that we can agree to the starting date a lot easier than we can to the closing, so let's not get fooled into starting too earlier and make a session that is too lengthy.

Mr. Lane: I think most everything has been said, but I couldn't agree more with the calendar so we know where we are at. I think there would have to be a fair bit of flexibility because from one year to another the program is going to be different. I think with the legislation, as well, it would be awfully nice for government members and, I'm sure, for opposition members to have some idea of what was coming forward. Again, there is always that opportunity that there has to be an emergency bill or something that would change that program. There will have to be some flexibility to it.

10:50 a.m.

I'm like Jack. I've been around here for 12 years and it doesn't seem to matter a damn when you start, you always finish on the last minute in the afternoon anyway. We would have to have a commitment from all people that this is the way it is and we are going to wind it down. Otherwise, it could be prolonged indefinitely, and that is the way it has been in my experience. We always hope to be out of here by December 16 and we always get out about the 19th. That has always been the way it has been.

Mr. Chairman: I guess we will have to get away from the idea that September is a travelling month.

Mr. Lane: I think there has to be some flexibility there because one year's program is not going to be exactly the same as another's.

Mr. Watson: I support the idea of a timetable. There are two examples that come to mind and there have to be some tradeoffs or other things beyond. If the timetable is used, such as the 10:30 rule is used sometimes to talk things out--we will talk it out to 10:30 and nothing will happen--if that is the way it is going to be treated, then we have to have some safeguards on that. If it is going to be treated the same way as the example that comes to my mind, estimates, then when you agree when you go into somebody's estimates that you are going to have so many hours and at the end of those many hours, if you are not finished, they just all pass in the last five minutes.

I think there are tradeoffs beyond here so that the rules cannot be used against the government in power or the opposition--it could work both ways. If we are saying there is a particular issue that we are just not going to stand for and we will talk this out to the end, and at the end we have got to

adjourn on that date and point to the rules and say that we have got to adjourn, then there have to have safeguards beyond this to prevent that from happening. I agree with a calendar by all means. Whatever it is, it is not as important as the fact that we have it.

I think committees, to a certain extent, do that. We do not do it too far in advance, but at least those attempts have been made to say we are going to meet on certain dates; therefore we could set our dates up for when we are going to be home and when we are going to be in committee. Let's do the same for the Legislature.

Mr. Chairman: Andy, that proposal on page 10, although it applies to amend the standing order, only applies to sitting days preceding June 30. Here I think we are talking, really, of just two semesters. If you have that preceding December 15 and preceding June 15, or something like that, if there is a little bit of a filibuster, there is a motion available to extend the sitting hours for the last 10 days. If the boys want to keep yapping at two or three o'clock in the morning, fine, there is a chance to do so.

Mr. Watson: But then at the end of that, are you going to have what amounts to automatic closure?

Mr. Chairman: It depends on the bill or the issue. Don't forget we are not proroguing necessarily; we can always recess.

Mr. Watson: I know, but that is what, speaking from a government point of view, they are not going to allow to happen, to have a rule put in that will allow an opposition party to filibuster to a certain date so that means they can recess and have the issue put off for another two or three months.

Mr. Breaugh: I think that is an important point. From an opposition point of view, the moment you accept the calendar you are accepting some kind of closure, and I don't care how you word it. When I say that I am an advocate of a calendar, I am accepting the notion that, somewhere among those events that will cause a calendar to be set up, there are limits on government about starting. I like that part. What I don't like is that it would put limits on the opposition about ending, but I am accepting that.

Mr. Watson: Do you see my comparison with the committee in the case of estimates?

Mr. Breaugh: Exactly.

Mr. Watson: If you use them all up on one section, you don't get finished.

Mr. Chairman: Are you saying, Mike, that during the last days of a semester, regardless of what the business may be, if it is a controversial bill, you are assuming that before we recess or prorogue that business at hand can be concluded by the government?

Mr. Breaugh: Yes. I think the opposition has to accept the idea that if you want a firm startup date and a firm commitment for a calendar, you also have to accept as part of that package that there will be rules about how things will be dealt with, so I am accepting time limits, really. I am saying that a bill that was introduced, say, in the first week in September has to be discharged in some manner by the end of November. I think closure is the wrong word, but I am accepting a timetable.

Mr. J. M. Johnson: We've got to keep to the time in a much fairer way. That would be the basis of allocation of time.

Mr. Breaugh: At Westminster they accept it in a very different manner than we do. They accept that when a bill is brought in, at some point in time it is going to be dealt with. In many ways the mother Parliament probably does many things that we would yell and scream about.

Mr. Chairman: I think I'm right from what I have read here that this is a total picture, starting now with a timetable for semesters. I think you get right down to a timetable on length of speeches; the whole thing is in a package. Everything is going to be sort of ordered and routine. If you are going to start talking about adjourning on December 15 or June 15 by coming in a little earlier, there is a certain process of carrying on a Legislature, including sitting hours and length of speeches and things like that, which are all included in this package.

Mr. Breaugh: If you go to the next section where they talk about timetable, there they're getting at one of the little problems I have. This session is a good example of it. We are supposedly back in session to do two things: get some concurrence votes under way and deal with some pieces of legislation. We're having a frightfully difficult time getting through the legislation, supposedly the prime reason for us being here.

I think, from the opposition point of view, we're going to have to take a look at this. It's not really stalling technique; it is a very ancient traditional parliamentary talk session that goes on. However, if you want to get organized about it, you have to recognize that those talk sessions cannot go on indefinitely. If I'm advocating some kind of timetabling, I'm saying that things like concurrence votes, like estimates, have to be tightened up in some way in order to get at the legislation.

I'm prepared to talk about what the things are that opposition parties would be prepared to give up to get at things that are of more substance. I have always had difficulty with the idea that supposedly there is some great piece of legislation that the government wants to deal with, but we never seem to get around to dealing with that. There always seem to be eight or nine niceties that have to be dealt with.

If we were going to change the rule, for example, on a concurrence vote, and we could actually make a difference in how money is spent, I might be a little more excited about it. If I

look at the reality of it, I'm talking about money which is probably already spent. So we are talking about the formality of dealing with it in a parliamentary way, which is a long way away from being relevant for me.

Maybe for other members it's the most exciting thing in the world, but I don't get too excited about the concept that estimates or concurrence would be cut down in hours. You give estimates 10 hours, and if you deal with them you deal with them. If you don't they are passed. I don't have any problem with that. In order to get at more legislative hours, I'm prepared to make that tradeoff.

Mr. J. M. Johnson: That's a sensible argument.

Mr. Treleaven: First, regarding the committee, I certainly favour a calendar, but it seems to me that, inherent in that plan, you are going to have to dispense with committees meeting between sessions. The whole purpose of a calendar is to know where you're going to be when. Therefore, you would have to dispense with committees--I suppose you could say you are going to have to restrict committees to an exact timetable in between those sessions.

It seems to me that it's useless to do a calendar on when the House sits and then leave the committees--most of us sit on two committees--to leave those loosey-goosey. That means four periods a year--the way we have now--of two, three and four weeks each. You've lost the whole purpose of it. I think there have, at least, to be controls and a calendar put on committees along with the House.

The second thing is, in so far as what Mike has just said, that is a very right-wing authoritarian view. I'll speak for the more reasonable left. Along with Mike's idea of treating it like estimates, there has to be a truckload of other rules brought in to the effect that the government couldn't totally then control affairs at its whim when bringing in legislation. Otherwise, it would bring in Bill 179 and Bill 127 the day before proroguing. There is a truckload of stuff that goes along with your idea before the people in your party would even look at it.

11 a.m.

Mr. Breaugh: I think that's why they talk about the fact that the government must present its legislative program at the beginning of the process, so that all of the decisions about what you're going to do and how you're going to handle things, by and large, have to be presented at the beginning of a session. In this way, you can't walk in during the last week with nine controversial bills and say this is the last week of the session and you've got one week to deal with these.

What this proposal is saying is that from the government's point of view, you line up what you want to do this session and you introduce it in the first few days of the session. Those are the matters that will be dealt with. I suppose you would always have to leave some leeway so that if some great emergency erupted

they could get that in front of the Legislature. That's the premise of the calendar, that the government puts its cards on the table at the beginning of the session. You've got three months to deal with these and you can't do that. You can't walk in the last week with a new program and say we like that but now we like this a little better. The commitment is on both sides. You tell us what you want to do and we agree this is how long we've got to do it.

Mr. Epp: Mr. Chairman, very quickly, there would be nothing wrong with trying to allocate certain weeks of committee hearings between sessions. We've done that before. For instance, I remember the justice committee sat last summer. It only sat for two weeks and everybody knew we were only going to sit for two weeks studying Bill 11, which was the municipal licensing bill. We have been doing that all along.

The other thing is that committees have a little more flexibility with respect to composition. If somebody definitely can't make it to a committee, then somebody else is put on that committee. There's a little more flexibility there.

The other thing is that with this kind of a timetable where the government would be announcing its bills at the beginning--the kind of legislation it is proposing--there would be, I imagine, some flexibility if it wanted to introduce emergency legislation. I know, for instance, one day back about a year or a year and a half ago when we were discussing municipal legislation and everything had been decided, the House leaders and the caucuses had decided we were going to recess on a particular June day or early July. Then about 10 pieces of municipal legislation went through that one morning. One was somewhat controversial and had to do with the archipelago, but it all floated through in about one morning.

If we'd had more time and we had had some kind of schedule, we would have had more time to discuss those pieces of municipal legislation. I'm not suggesting two or three weeks, but maybe we would have had one hour at least for each piece of legislation. As it turned out, we had two and a half hours for 10 pieces of legislation. This kind of suggestion that we're talking about here, about a timetable, would bring more order into the system.

Mr. Chairman: It would give more time for committees.

Mr. Epp: It would give more time for committees, yes.

Mr. Chairman: Smirle, do you want to carry on?

Clerk of the Committee: Continuing with the parliamentary timetable: "An essential concomitant of a parliamentary calendar is a parliamentary timetable for the daily sittings of the House. Your committee considered various proposals, such as the introduction of a four-day week and the establishment of periodic adjournments for one week during which committee meetings could take place and members could visit their ridings. Your committee concluded that the House should continue to sit five days a week, but that evening sittings should not take

place except in urgent or pressing circumstances. It should be stressed that this proposal maintains the same number of sitting hours per week as at present and will leave the evenings available for other parliamentary business such as committee work.

"Your committee recommends the adoption of the following daily timetable:

"Monday, Tuesday and Thursday:

"11 a.m.--prayers. After prayers to 1 p.m.--government business;

"1 p.m. to 2 p.m.--break for lunch;

"2 p.m. to 3 p.m.--question period and routine proceedings;

"3 p.m. to 6 p.m.--government business;

"6 p.m. to 6:30 p.m.--adjournment debate.

"Wednesday:

"Morning available for caucus meetings;

"2 p.m.--prayers. After prayers to 3 p.m., question period and routine proceedings;

"3 p.m. to 6 p.m.--private members' business.

"Friday:

"11 a.m.--prayers. After prayers to 12 noon, question period and routine proceedings;

"12 noon to 1 p.m.--government business;

"1 p.m. to 2 p.m.--break for lunch;

"2 p.m. to 5 p.m.--government business.

"Provision for sitting beyond the automatic hour of adjournment should be retained as provided in standing order 6.(5), under which a motion to continue the sitting beyond the ordinary hours may be made and may be blocked by 10 members. Your committee recommends that the number be increased from 10 to 25.

"Your committee recommends that no recorded divisions should take place on a Friday, except in the case of non-debatable motions. Should a recorded division be demanded, either in the House or in committee of the whole, on a question put from the chair on a Friday, it shall be held over until 3 p.m. on the following sitting day, except in the case of non-debatable motions and, upon notice, a votable opposition supply motion on an allotted day. In the case of a postponed division, the bells should ring for not longer than 15 minutes."

I don't think it's necessary to read the proposed changes to the standing order.

Mr. Chairman: No.

Mr. Breaugh: I wonder if we could entertain some discussion about the concept of a timetable. Again, I don't think that my whole caucus would support this, but I really don't understand why this House does not start until two o'clock in the afternoon. If you stop and think, if you were running a business or a school or running anything, would you sit around till halfway through the day to start up? I would say no.

There are a couple of other points that have always concerned me. One is that in my experience here the place disintegrates during the evenings. I won't go into all of the reasons as to why it disintegrates.

Mr. Treleaven: Why? Are people tired?

Mr. Breaugh: I think people are a little tired, yes. For whatever reason, I have never found the evening sessions here to be of great benefit to anyone. I would be happy with the notion that the House starts earlier in the day, around 10 a.m. or 11 a.m., or something such as they have used as an example here, but ceases at 6 p.m. I am happy to have committee meetings, caucus meetings, whatever, during the evening, but I think it would be beneficial to reorganize our time so that the House does not sit during the evenings.

If you look at the actual number of hours, by moving to an earlier start in the day, no matter how you cut it, you could increase dramatically the number of hours for legislation in the House. I think that's a sensible thing to do.

I don't understand why we come in here on Monday, sit long hours Tuesday, and then Wednesday is kind of nonexistent. I understand it has something to do with the cabinet traditionally meeting on Wednesdays. I think the cabinet could meet Tuesday night, for example, and accomplish its business, and so could the caucuses.

The other point which strikes me as being something which you have to deal with is that I believe there is a useful role for the members in their ridings. One of the faults that I have always thought was present in the federal Parliament was the fact that people leave their ridings and don't have any contact with their constituents except by phone for lengthy periods of time.

Those guys will very often go to Ottawa and not be seen in their ridings except on weekends for dinners and dances for five and six months at a whack. That's not good. If they are supposed to be representing people in a constituency, it's very difficult to do that if they are not there. You don't know what they're thinking about pieces of legislation or what the government is or isn't doing.

Somehow in the timetabling idea you have to work in what I believe to be a reasonable concept, that it's not good for members

of a legislature or a parliament to run off to the seat of parliament and get themselves isolated for long periods of time. You should try to organize the business of the Legislature in such a way that you are not spending five and six days a week in Toronto. I really don't like that idea.

I think Jack has a really valid point. When people come here from long distances, it's really bad to have them in here and have a lot of down time involved. I would be an advocate of something like this that says you organize the time so that when they are in Toronto and the House is in session you maximize the number of hours that the Legislature can sit. That's given your priority. Inconveniences to caucuses and cabinets come second to the sitting of the Legislature itself.

For example, you could work out all kinds of timetables which would give you more hours when the Legislature is sitting. I'll bet you could do a three-day week here with more hours of legislative time than we currently have. That's eminently possible. Whatever way you move on this, the obvious one is to start earlier during the day, that you would get that, and leave the evenings free for committees or caucus meetings or cabinet meetings or whatever.

Mr. Chairman: Maybe wind up Thursday night or something.

11:10 a.m.

Mr. Breaugh: I think you could work a four-day week here. You could sit four days in a row, and then you could have three days in your constituency.

Mr. J. M. Johnson: I agree with Mike's comments. I have always felt that we waste too much time during the sitting week. I would support the one o'clock starting, but I also feel we should retain the evenings.

As I mentioned earlier, it is fine for the people who have the opportunity to return to their homes, but there is no way the members who have to travel 100 miles or further can go home in the evening and come back the next morning. So while we are here, let us get the business done and set as many hours as we can into the shorter time frame. I would like nothing better than to have either Monday or Friday free to be in the riding. If we can do it in the four days, I would certainly support it.

However, I do not think that setting the evenings aside for committees will work, because there will be too many members who do have the opportunity to go home who will not be available. I think we should be tied into a schedule; if it is four days, then so be it, but it should be four days of solid work. I have noticed that when legislation is presented in an afternoon period, by the time question period is over, and there are procedural wrangles and everything else, quite often we are down to an hour and a half. On Tuesday and Thursday evenings we have two and a half solid hours of legislation. They are the most productive.

Tuesday night was a good example. I think four concurrences

went through. I definitely feel that Tuesday and Thursday could be devoted to legislation.

Mr. Breaugh: When they changed the standing orders, I do not understand why they made private members' hours on Thursday afternoon. Why would you not make that Thursday evening?

If you look at attendance in the House as a criterion, the lowest times are in the evening. Members are gone. I am supposed to go to Hamilton tonight. I do not know if that is going to happen or not. Everybody is taking engagements that have them out of here during the evening, because the rest of the world works on a different timetable than we do. They are not available to have meetings or whatever in the middle of the afternoon.

The rest of the world does not shut down as we often do to accommodate that. They work, not on a nine-to-five syndrome, but the rest of the world, whether they are on shifts or not, have meetings during the evening. If you want to be a participant in anything like that, you are going to be away from the Legislature.

That is basically my argument for not sitting in the evening. We are flying in the face of the rest of the world when we do that.

Mr. Treleaven: If you are going to condemn Thursday evening, I would like to see at least Thursday afternoon excluded from sittings or duties here. That way, if you are coming down Monday noon, and you are condensing your work and beefing it up on Wednesdays, and you are holding your committees and so on, at least that leaves one evening for you to get back and see people at meetings. Friday nights are usually out for meetings.

Right now, we are often either unavailable any week night for meetings, as Mike said, or some of us who live 100 miles away or less run home Wednesday afternoon or night for all kinds of constituency appointments. It would sure be nice to have that Thursday night and all day Friday back in your constituency. But work Thursday night?

I do not care if you work Wednesday night here. Fine. It would leave you Thursday night free for meetings or to get an early start on Friday morning. I would like to be out of here at six o'clock on Thursday.

Interjection.

Mr. Treleaven: If you are going to be here, you might as well be working.

Mr. Epp: In my own case, there are functions back home on Thursday night. I cannot get back because there is something going on here Thursday night. While the private members' bills are important, they are not terribly important; not as important as some legislation.

Mr. Treleaven: If you had one week night when you knew you were going to be in your riding--right now, we do not, outside

of Friday--one week night that you knew you could count on, you could say, "Fine," to your local Progressive Conservative association, "please hold your meetings Thursday nights."

I do not have any evening appointments, but some guys do. They could count on ramming through constituency appointments starting Thursday at eight o'clock. At least you could count on it. Our problem now is, as Mike said before, that everything you accept, you say "subject to" the House being in, committee not being in. It is all tentative.

I go along with what these gentlemen have said, and knocking out Thursday night so we can get home.

Mr. Lane: Speaking as a member in the mid-north, I spend a minimum of 10 hours a week travelling. If the weather happens to be bad, it is more than that. This winter, Air Canada cancelled its afternoon flight, so I have to come back on Sunday afternoon and I get home on Friday night about 10 o'clock. It does not give me very much time.

I would love to be through on Thursday night if possible. Then I could either go Thursday night or Friday morning and I would not have to come back until Sunday night or Monday morning.

Mr. J. M. Johnson: Whatever hours we come up with, we should be extremely concerned about the northern and eastern members who are a fair distance away. It is not fair for them to be tied into something that gives a break in the middle of the week, because they cannot take advantage of it.

Mr. Chairman: In the meetings that are supposed to be scheduled on Wednesday; cabinet and--

Mr. Treleaven: Justice committee on Wednesday morning.

Mr. Chairman: I was on the secretariat where the provincial secretaries meet; policy and priorities. They have caucus Wednesday morning and policy and priorities, P and P, Wednesday afternoon. As far as they are concerned, it is a full day. There is no reason why P and P, for example, could not meet on Monday or Tuesday evening.

Mr. J. M. Johnson: George, as an example, why couldn't private members meet Wednesday afternoon? Cabinet is sitting anyway. They do not partake in it that much, so it would not be in conflict. Caucus could be Wednesday morning just as easily as any other morning.

Mr. Chairman: For a private member, like John, who gets here on a Monday and is here until we recess at the end of the week, Wednesday, for the most part--unless you get committee meetings on that Wednesday--is a lost day. I know you can sleep in until noon, John, and go out and raise hell on Tuesday night, but it is a wasted day. We could very easily sit on Wednesday without inconveniencing anybody.

Mr. Lane: In my particular riding, Elliot Lake is 150

miles away from where I live. So if I go to Elliot Lake for the weekend, I may get home for Sunday morning breakfast, and that is all the time I have at home with my family. It is a pretty difficult situation.

Mr. McGuigan: I certainly see advantages in fine-tuning the timetable in the Legislature to allow time at either end of the sitting week for members who live quite some distances from Toronto.

The one thing though, Mr. Chairman, and maybe you can shed some light on it, is that you mentioned the policy and priority committee meeting in the evenings and cabinet meetings possibly being held in the evenings as well. How full are their evening timetables in terms of speaking engagements and the rest of it? Are we throwing a--

Mr. Chairman: I have a feeling that Wednesday night is a very busy evening for cabinet. That is one night we do not sit and I think a lot of functions are scheduled for Wednesday night as far as cabinet is concerned. I know that was the case with me at one time. As far as cabinet is concerned, I think Wednesday is a full day.

All I am saying is that they could still have Wednesday morning for their caucus meeting--there is no reason to change that--but I think P and P, for example, should meet before cabinet, on Monday or Tuesday evening. I do not think there are too many public functions on Monday night.

Mr. Breaugh: If you start to fiddle around with timetables and try to get some concept of how many hours you could work, the hard, cold fact is you could work a three-day legislative week from 10 in the morning until six o'clock and come up with more legislative hours than we have ever had in our history.

Mr. Chairman: I think that by squeezing things into three or four full days, there is a tendency to get things done,.

Mr. J. M. Johnson: Tuesday and Thursday are the only two days when we really seem to do very much. Mondays and Fridays are half wasted and Wednesday is just a social day. There is no reason that Monday and Tuesday could not be strong working days, do what we can on Wednesday and finish off Thursday at six. If the members knew they had Thursday evening off, more of them would be here on Monday and Tuesday.

Mr. Breaugh: What I find ironic is that the Legislature itself is scheduled around everybody else's meetings. The reason we do not sit Tuesday morning is the caucuses sit. Why can't the caucuses sit Monday or Tuesday night, or whatever? Wednesday we do not sit, because cabinet and the committees of cabinet sit. I do not know why we do not sit Thursday morning.

If you said the core of the legislative week to deal with legislation is Tuesday, Wednesday and Thursday, from 10 in the morning until six, that would give you 24 hours minus three hours

for question period. That is 21 hours of legislative work per week. Let the caucuses and the committees of the House sit Tuesday night and Wednesday night. Why not do it that way?

Mr. McGuigan: Are you not going to give us a lunch in there?

Mr. Breaugh: Is it necessary that we shut the whole operation down for an hour so everybody can go and eat? I do not care whether the House is sitting or not, if you are dealing with municipal legislation, Herb is going to be there, I am going to be there, the parliamentary assistant will probably be there and 17 other people who got nailed by the whips. Now do we have to shut the whole operation down so these 20 people can go in the House? I do not think so.

Mr. Watson: The opposition's concern is question period. Let us assume that private members' hour--I do not know whether we want to have a discussion or whether we want to continue on the same time--will continue in about the same time. I can see an allotment of a morning sitting going for private members' hour, then having your vote on private members' resolutions if there are any, and then going into question period.

Quite frankly, that vote at 5:45 on Thursday night can be a very annoying vote. I do not know if you people think so, but I do because I am not interested in the private members' hour. They are going to debate some report Thursday night that I am not interested in and I have to be there at 5:45. It is a nuisance.

Mr. Epp: So you are saying, Andy, that since everybody comes in for two o'clock question period, why could they not come in just a few minutes earlier and vote on the private members' private resolution or bill. For instance, on Monday or Tuesday, whenever it is going to be, we could start those things at maybe 11 o'clock or 10 o'clock, finish up just before two o'clock and have your vote.

Mr. Watson: We do stupid things around here in terms of voting. Sometimes it is done at our whim and sometimes it is at yours. It seems to me that we purposely inconvenience ourselves to no end in voting. I understand that you cannot stack certain things when you are in legislation, but if you can get agreement in other things in committee, you can.

The time that everybody is there is in question period. Maybe you want question period of the morning, I do not know, but I think the time to take votes is when the people are there.

Mr. Breaugh: Let me be a real heretic and try a couple of things I have thought about. Why do we have to do this ridiculous thing of ringing bells and having people come in here? I have never understood that. I have been caught a number of times in situations where I am not scheduled to be in the House on a given evening so I take an engagement somewhere. About six o'clock the whip will call me up and tell me there is some great vote occurring. So you go and take the engagement anyway and then you run like mad to come down here. You are not going to say anything

or do anything, you are just going to be in your place and stand up at the right time. That seems to me to be nuts.

Mr. Treleaven: Proxies.

Mr. Breaugh: It is a venerable tradition and all of that, but you know which way I am going to go. What is the difference whether I kill myself driving down Highway 401 and stand up at the right time, or whether the whip stands up and says, "Well, listen, our caucus has 30 members, eh, Herb, and here are 30 votes"?

It seems to me there is some stupidity involved in that. You see it when we all stand around in the Legislature, for example, until the cabinet comes back in their tuxedos from the Granite Club. I think that is a pretty sight to watch and all of that, but we know which way those guys are going to vote. Why are we all standing around waiting for them to show up?

Mr. Chairman: Especially when the trousers and the jacket don't match, you have a problem.

Mr. Breaugh: Are other people prepared to kind of think about concepts like that, whether it is a proxy vote--

Mr. J. M. Johnson: I do not think we should waste a lot of time on that one, because that is not going to happen.

Mr. Breaugh: The other alternative to that would be what Andy has suggested, which I also think is sensible and which they accepted in part here. We know that there are times when the members will be in the Legislature; why are we not scheduling the votes for those times?

Mr. Watson: Why cannot the votes on legislation discussed today be voted on at 1:45 p.m. tomorrow? I guess that is what I am asking.

Mr. Breaugh: There is no reason in the world why not.

Mr. Treleaven: We have only been here two years. I ask you older guys, if this place has been going for 100-odd years, how did you get yourselves in such a hell of a mess by the time we got here? Why do you have such illogical rules in the place in the first place? You have to answer that before you decide to change them. There is some reason why things are in the illogical state they are.

Mr. Breaugh: The sad thing is that there is no logical reason why they are.

Mr. Chairman: Believe me, there is a big improvement over 10 years ago.

Mr. Treleaven: You have to stomp that snake of illogicality, if there is such a word, before you get totally sensible. You have to understand why, and attack those illogical things we have now, like 5:45 p.m. Why was this not done before?

There have been logical people around for 100 years. How did we get so illogical?

Interjection: I am not convinced that is true.

Mr. Watson: This is what bothers me. We take a little bit of a step. We have two resolutions. We get to the end of the first one, and we say: "Oh it's all right to put that one off until 5:45 p.m." Then we go for the other one, and it has to happen then.

Mr. Epp: I was in municipal council for 10 years, and when I came here in 1977 I just could not believe the illogicality or whatever it was that went on here. You have that bloody big chamber; you often have fewer than 20 people there; you are supposed to have at least 20. Someone is debating there, and no one gives a damn what is being said.

You have reports sometimes on Thursday night, and we have had procedural affairs reports. The only people who think it is important are those who are saying something.

Mr. Chairman: Have you ever been in the United States Senate?

Mr. Epp: I am sure things are just as bad there.

I spoke to the Speaker of that time, and said: "Look"--and there was another member who is now in the cabinet with whom I had lunch one time downstairs, and I said: "How come this is going on? This is awful."

He said, "Oh, it's tradition." It is always "tradition." So, because it is tradition, we keep on being illogical. I am really happy this discussion is going on today, because I think maybe we have a germ of something here with which we can do something.

In particular, the catalyst of this whole thing is the federal report. If they can do it federally, after all the animosity and everything else that has been there for years, certainly we can do it here.

Mr. Chairman: Okay. Do you want go on to length of speeches, on page 14, gentlemen?

Mr. Eichmanis: "Your committee is of the opinion that the time limits on speeches should be shortened wherever the standing orders provide for 40-minute (except as provided in the recommendations hereunder relating to second reading of government bills) and 30-minute time limits and that an effort should be made to introduce greater spontaneity and more cut and thrust into debate. Your committee proposes that these speeches be limited to 20 minutes, but that an additional 10 minutes following each speech should be made available, if required, for questions or comments to the member who has just spoken. Your committee proposes that the amendments to the appropriate standing orders be made as simple as possible, but that the new debating process be

controlled by the chair in accordance with the following guidelines.

"The 10 minutes set aside following a member's speech should be used to question the member or comment briefly on the speech in a manner strictly relevant to the content of that speech.

"Your committee envisages that exchanges which would take place would be short and sharp. More than one member should be allowed to take advantage of the 10 minutes available, and the member whose speech is the subject of a question or comment should be given time within the 10 minutes to reply to the points raised. No specific rules should govern the length of the interventions, this being left to the discretion of the chair. However, your committee would not wish to see one member monopolizing this 10-minute period in cases where there are several members who wish to intervene. Furthermore the chair should control the interventions to promote a series of exchanges to enliven the debate and add a constructive element lacking in a debate simply consisting of a series of set speeches.

11:30 a.m.

"The chair should give priority during the 10-minute period to members representing parties other than that of the member who has just spoken. Your committee emphasizes that it sees these 10-minute periods as being used for questions and answers and critical exchanges."

Clerk of the Committee: I think probably we should read the recommendations, because they speak to the people who can speak for more than 20 minutes.

Mr. Eichmanis: "Standing order 31.(1) is deleted and the following substituted therefor:

"'31.(1) Unless otherwise provided in these standing orders, when the Speaker is in the chair, no member, except the Prime Minister and the Leader of the Opposition, or a minister moving a government order and the member speaking in reply immediately after such minister, or a member making a motion of "no confidence" in the government and a minister replying thereto, shall speak for more than 20 minutes at a time in any debate. Following the speech of each member, a period not exceeding 10 minutes shall be made available, if required, to allow members to ask questions and comment briefly on matters relevant to the speech and to allow responses thereto.'

"Standing order 37.(1) is deleted and the following substituted therefor:

"'No member, unless otherwise provided by a standing order or a special order, may speak twice to a question except in explanation of a material part of his or her speech which may have been misquoted or misunderstood, and the member is not to introduce any new matter, and no debate shall be allowed upon such explanation.'

"Standing order 38.(7) is deleted and the following substituted therefor:

"(7) No member, except the Prime Minister and the Leader of the Opposition, shall speak for more than 20 minutes at a time in the said debate. Following the speech of each member a period not exceeding 10 minutes shall be made available, if required, to allow members to ask questions and comment briefly on matters relevant to the speech and to allow responses thereto."

"Standing order 58.(13) is deleted and the following substituted therefor:

"(13) During proceedings on any item of business under the provisions of this standing order, no member may speak more than once or longer than 20 minutes. Following the speech of each member, a period not exceeding 10 minutes shall be made available, if required, to allow members to ask questions and comment briefly on matters relevant to the speech and to allow responses thereto."

"Standing order 60.(9) is deleted and the following substituted therefor:

"(9) No member, except the Minister of Finance, the member speaking first on behalf of the opposition, the Prime Minister and the Leader of the Opposition, shall speak for more than 20 minutes at a time in the budget debate. Following the speech of each member, a period not exceeding 10 minutes shall be made available, if required, to allow members to ask questions and comment briefly on matters relevant to the speech and to allow responses thereto."

Clerk of the Committee: May I make a comment? I have been watching the debates I have been receiving from the House of Commons. I must say unless I've missed it that this 10-minute provision has not really been followed at all. People are just not asking questions. Maybe, when the Prime Minister gets up to make a speech, they will, and the Leader of the Opposition.

Mr. Breaugh: I am generally an advocate of most of what they are recommending here. The one place where I depart from it is this--I do not think this is realistic. On two or three major counts I think it is wrong.

First of all, I am an advocate of the idea that you may be the Prime Minister of Canada or the Premier of Ontario, but when you go into the Legislature you are a member of the Legislature the same as everyone else. What this does is to set up various statuses, so that this guy has 60 minutes and this member over here only has 20 minutes. I dislike the idea that you are kind of going to put status on different members. I think that is a problem.

The biggest problem I see, however, is that I do not honestly believe this is ever going to work. It might work if someone could convince everyone in there that there will be no heckling, so that, instead of heckling during a speech, you wait for the 10-minutes session afterwards. I wish that were true, but I do not think that is ever going to happen.

Second, I think that if it did transpire and they began to use it, what it means is that someone, say Dick Treleaven, gets up and does his speech, and in my party we designate a hit man for the last 10 minutes, or five of them, and they get up and destroy whatever Treleaven said--which is not hard to do, but it means you have to withhold all of this venom until he is finished.

This is a little too fancy for my taste, that is the problem. Most of us who came out of municipal councils know that there they have said there is some kind of a time limit on how long you can talk. It seems to work reasonably well there, mostly because if something of major importance crops up, that kind of rule is dispensed with, by and large.

I think if you went to limits on speeches, what I would prefer to do is to say what we are trying to do here is to stop somebody from talking for a long period of time without inhibiting his right to give a full and complete speech. From my point of view, if you put a 20-minute time limit on my caucus, the obvious thing is that where before we might have had three people go for an hour apiece, every one of us is going to do 20 minutes.

Any kind of allocation of time from that point of view just causes you to change gears, so I would say go to a maximum length of time where anyone who talks for an hour or more on a given bill is obviously trying to rag it out, so make your limit as broad as possible so you don't get caught in that game.

I think where they miss the boat in this is that I see these recommendations as being not very practical. I don't think they are going to accomplish what they set out to do. Strangely enough, I am a bit of an advocate of the idea that the heckling should cease--I really am. It is fun sometimes but it is not really very useful.

When you talk to people who have come to visit Queen's Park, that is the part they don't understand. "Why don't you let the guy say what he wants to say and, if he is nuts, get up afterwards and say so? Why do you interject all the time?" If you watch the federal proceedings they are, if anything, worse at that than we are, so I think they kind of miss the boat on this.

If I had a preference, I would point in a different direction than they did. They have a long series of rules here which I think are going to be, first, ignored totally and, second, abused considerably. So I would think that if we were contemplating some changes around this concept, I would urge us to go in quite a different direction.

Mr. Treleaven: I would like to go back to the basics here. What is the purpose of debate? Why do we have debate? Mike, you made two suggestions. You talked about shifting gears. Is debate simply a tool of the different political parties, i.e. we are going to take three hours; it does not matter whether we read the telephone book, we are going to take three hours? Is it strategy, or is to inform or to try to convince the other side, at least in theory, or is to get Hansard and speak back to your constituents? What is the purpose of debate today?

Mr. Breaugh: If you are asking me, I would say the purpose of most of the debate that I have ever seen here is to put on the record your personal opinion, or your party's position, and that is it.

Mr. Treleaven: So that is different than the exercise we are going through here. This morning I think we are exploring each other's heads.

Mr. Breaugh: Yes.

Mr. Treleaven: That is not the purpose in the House. The purpose in the House, therefore, is window dressing--call a spade a spade--to put forth your party platform or to send Hansard back home. It is window dressing. Understand that and make your rules according to window dressing.

Mr. Chairman: Or to elicit information.

Mr. Treleaven: To elicit? How can you possibly elicit information? That is what question period is supposed to be.

Mr. Breaugh: I would say on that point that most of the actual probing of a piece of legislation, for example, occurs in committee; it does not occur in the House. If there is an exchange of ideas, the only place I have ever seen that really happen is in committee, where it is informal enough that you and I can exchange views. You and I can't really exchange points of view and come to a consensus and a conclusion when we are standing 60 feet apart; it's not really conducive to that.

So I would make that distinction and I would accept--I would not call it window dressing because I think it is a legitimate process--but I believe that formal debate in the Legislature is a process whereby the government proposes an initiative and the opposition parties respond in a formal way. I think there are abuses in it, quite frankly, from all sides, and it is more on the opposition side than it is on the government side.

I am a little at a loss to explain why anyone who may know nothing about the bill that is before the House, can come in and talk for an hour or two hours. I am not convinced that that is a useful purpose, although that is very traditional parliamentary stuff.

My personal beef on that is that I really get upset when three or four of us work very hard on a piece of legislation, go to three or four weeks of committee hearings, do our homework and talk to constituents about that particular problem, then we go in there and there are probably half a dozen members of the Legislature who are really into a given piece of legislation. They are having that kind of debate and they have spent a long time on that. I think that is meaningful debate, but then in comes somebody who wants to give a speech who may know nothing about committee hearings. You constantly see a thing where somebody has to kind of explain to this honourable member what this bill is all about. Yet they have a right to come in and sit down and stand in

their place and talk ad nauseam about it. That, frankly, drives me nuts.

11:40 a.m.

We have all seen occasions where one person in any one of the parties does that. I recall one wonderful afternoon I spent here until about 10:30 at night, where we had all agreed that this House had finished its business and we were doing those little concurrences at the end of a session. One person from one caucus, who had a reputation of speaking often and long on anything you could name, got up and did his bit. Then the Liberals got up, with one person from their caucus who is famed for the same thing and did it, and then one from our caucus, also famed for the same technique, got up and did the same thing.

There is no great harm in that, except the entire Legislature of Ontario sat around, with all that expense, for about eight hours, not doing anything particularly useful that I could see. We were all here and the price we paid for an individual's rights to speak on any matter he wants for as long as he wants was that 122 people sat around for eight hours while these three people got off their chests whatever it was they wanted to say. I think that is a little pricey.

Mr. Epp: And it wasn't a bill.

Mr. Breaugh: It wasn't a bill.

Mr. J. M. Johnson: I like the idea of a time limit on speeches. If a member cannot make his point in a stated time, then there is something the matter with the member or what he has to say.

I also like the idea of no heckling. Heckling possibly serves a purpose in question period at the first part of the session because it is time to give and take. I think maybe we would have problems in eliminating that aspect, but certainly when we are dealing with legislation, and there are only 20 or 25 members in the House, there is no necessity for heckling to any degree--maybe the odd very kind remark, but certainly not too much.

I am a little hesitant about the 10-minute question period after each debate. I think it would foul up the debate. You would lose--

Mr. Chairman: It might get rid of the heckling, though.

Mr. J. M. Johnson: I would like to see how it works in Ottawa; maybe there is some merit to it. That, I assume, is one of the reasons we are going to Ottawa.

Mr. Lane: Mike, certainly you are not one of the guilty people, but I don't see any difference between 20 minutes and an hour with some of your people, because you would just change gears less often; the debate would still go on for five hours and there would be five people instead of 15.

Listening to the rhetoric that goes on--not just from your party, it is going to happen anyway. If it is an hour, fine, there are going to be five people there for five hours, or if it is 20 minutes, there are going to be 15 people there for 20 minutes. It doesn't seem to make much difference, I don't think. I just wonder where you see the difference between 20 minutes and an hour, that is all.

Mr. Breaugh: The difficulty I see with the short time periods is that while most of the time that would not be too bad, but if you take a bill like the Planning Act, for example, which is a very complicated piece of legislation, you could do a 20-minute piece on that, but the way to do that, if you were serious about giving some kind of an informed comment about your opinion on the Planning Act, is that you have to be very selective. You would have to be cutting out whole sections of the act that you would say nothing about. I think you get yourself in a bit of a jackpot when you go to that short time period that way.

If you are talking about a municipal bylaw about pinballs, I agree. You could say everything that you ever wanted to say about pinballs in 20 minutes. However, if you go to the kind of legislation that we often see--for example, would you like your Treasurer to be confined to an hour to introduce the budget? I think most of the times I have been in here they need an hour and a half or two hours to put forward just the beginnings of the budgetary process. That is a big, complicated piece of business requiring a substantial effort.

If you talk about time limits, you talk about a breaking point, which says if you go over this you are obviously being excessive. That is where I would move on that, as opposed to let's cut it down into nice short pieces. A lot of the things we are asked to deal with here just don't lend themselves to set pieces. Most of them, maybe, but four or five times a session you will come to places where the long debate is necessary.

What I'm trying to do here, if I am advocating some restriction on the length of speeches, is to cut out the obvious excesses, not to put something in place which limits the members. I have real problems saying that we would designate that certain people are allowed to speak for so long. Being very pragmatic about it, I would probably say, if that's what we're discussing, why don't we say that the first two or three speakers from each caucus can have 60 minutes or whatever and then subsequent to that everybody can do it?

It seems to me we do funny things here. We often get into agreements, especially in the latter part of sessions, that we will divide the time. A couple of times I have had it in the fall where somebody would come to me and say we have agreed to 10- or 15-minute speeches. I look at a piece of legislation where I would rather do nothing than get up and give 10 minutes on it. I could give a 10-minute rant on almost anything at any time, but if I wanted to really be pertinent about the thing I would need a little bit of time to develop what I am talking about.

I don't like the short ones. I don't think that a

Legislature is a place for that. To put the difference, in a committee because you're going through clause by clause and there is give and take, a 10- or 15-minute time limit would mean nothing to us because we rarely go past that. In the Legislature where there is a formal debate, you need some lengthy period of time on occasion.

Mr. Epp: Mr. Chairman, I was wondering--

Mr. Chairman: We would like to finish this section, if we could, to get over at least to page 17. It's just discussion. No decisions are being made.

Mr. Epp: Are we sitting next week?

Mr. Chairman: I would think we would probably finish this next week, yes. Carry on then.

Clerk of the Committee: The next section deals in part with something Mr. Breaugh mentioned, about limiting perhaps the first several speeches to X number of minutes and then reducing them thereafter.

"3(a) Second reading of government bills.

"Your committee considered a number of proposals regarding second reading of government bills, including referring bills to committee following first reading. It was decided to keep the present procedure of dealing with second reading, as it provides for discussion on the principle of the bill. Further, no time limit would be established on the second reading debate.

"Your committee recommends that the first three speakers be limited to 40 minutes each, allowing for a contribution from the three parties, but not to be followed by 10-minute exchanges. This would then be followed by speeches of a maximum length of 20 minutes for the first eight hours, followed by 10-minute exchanges in each case if required. Thereafter, speeches would be limited to 10 minutes without the provisions for exchanges.

"Standing order 31 would be amended by adding the following new section:

"(3) When second reading of a government bill is being considered, no member except the Prime Minister and Leader of the Opposition shall speak for more than

"(a) 40 minutes if that member is the first, second or third speaker;

"(b) 20 minutes following the first three speakers if that member begins to speak within the next eight hours of consideration; and following the speech of each member a period not exceeding 10 minutes shall be made available, if required, to allow members to ask questions and comment briefly on matters relevant to the speech and to permit responses thereto;

"(c) 10 minutes if a member speaks thereafter."

Mr. Chairman: Would that 10 minutes apply to (a) as well, after the 40-minute speeches?

Clerk of the Committee: No.

Mr. Watson: Does anybody know how they intend to enforce this?

Mr. Chairman: The Speaker.

Clerk of the Committee: The Speaker would have to, just like our debates now.

Mr. Watson: I can see this running two ways. I can see putting the rules there as the intent of how it wants to go. We could run it the way that some committees run where, unless somebody recognizes the clock, the chairman doesn't recognize it.

The other way is where they keep track of the doggone thing and when your time is up, you sit down. I see the two aspects. One is sort of, here are the rules and, by golly, this is the way we're going to run it, bang, bang, bang; or here are the rules because the intent is we want shorter speeches. Therefore, if somebody runs 22 minutes, nobody's going to recognize the clock and cut them off.

Clerk of the Committee: I think the intent here is that at the end of the time allocated for that member's speech, the Speaker or whoever is in the chair would rise and cut the member off and would proceed to the next person.

11:50 a.m.

Mr. Breaugh: I don't like that. I don't like the Speaker rising and saying, "Your time has expired." You always get into a situation where someone is in mid-sentence. Why not let him finish?

Mr. Chairman: Give him a warning.

Mr. Breaugh: The moment you formalize it and say, "You've got 10 minutes and that's it," and the gong goes in 10 minutes and they cut off your microphone--I don't think that really serves a useful purpose. That's my problem when you get into formalizing how long you can speak. You get a gong show going. The bell rings and you go into the penalty box if you go 11 minutes.

Clerk of the Committee: Sometimes the Speaker will let a member go on for 15, 20 or 30 seconds to complete his or her speech. The problem then is that some members get a little greedy and take another two minutes. Then other members start complaining that they should have two minutes more because that member got two minutes.

Mr. Breaugh: Yes.

Clerk of the Committee: So it has to be strictly enforced. If and when we ever get a timing device installed in the

chamber, members will be able, during the course of their speeches, to see how much time they've got left and judge themselves accordingly.

Mr. Breaugh: I really dislike that. I do not mind the idea that the members--

Mr. Chairman: That's a good idea. We will have a trap door under all opposition chairs.

Mr. Breaugh: --agree that they've got an afternoon to do a debate on this and they try to share the time. I don't mind that at all. In my experience here, most people try to stay roughly within that. I find that formalizing it is not a very smooth way to conduct business.

Mr. Chairman: How has the private members' hour been doing?

Mr. Breaugh: Not bad.

Mr. Watson: Except once in a while the Speaker goofs.

Mr. Chairman: I know, but in the end result you've saved some time and you've allocated time a little more fairly.

Mr. Breaugh: Yes.

Clerk of the Committee: We will continue:

"(b) Report stage of government bills.

"Your committee felt the use of report stage amendments allowed too much time to reconsider earlier proposals. Although abolishing this stage altogether and using third reading for further amendments was considered, it was decided to continue the current procedure, but to limit all speeches at the report stage to 10 minutes.

"(c) Third reading of government bills.

"Your committee considered refining the provisions regarding length of speeches and exchanges for third reading, but left the proposal unchanged; i.e. up to 20-minute speeches followed by up to 10-minute exchanges."

Mr. Breaugh: This is another example where I think they overdid themselves in designing rules and regulations. If you watch the normal pattern as things go through here, there is no debate on first reading. There is a whole lot of debate on second reading and normally no debate on third reading. Why wouldn't you simply recognize that, as opposed to the time limits all the way along?

Mr. Watson: But you have to have a provision for--

Mr. Breaugh: Why?

Mr. Watson: On third reading? You have to have a provision for debate on third reading.

Mr. Breaugh: I wouldn't mind the time limits there, but what I'm trying to keep free here is that you should allow debate if it is useful. If it's not serving a useful purpose, restrict it.

Mr. J. M. Johnson: Who makes that ruling?

Clerk of the Committee: The Speaker.

Mr. Breaugh: The Speaker would, yes. On first reading, there may be an occasion for somebody to stand up and say, "We don't like this." You want to preserve that, but there is no need to preserve a wide-ranging debate on first reading, which is, by and large, what we do. Debate usually happens on second reading.

Do we want to preserve debate at all stages? Are there stages in there where we can say we're just tabling the report and we don't want to have a big debate about it now and so remove the debate element from that?

We almost get to the point where at certain stages a bill is not debatable but then at other stages you can really have your debate. I was talking to some people from Nova Scotia about this. I believe that is what they do in their Legislature. They have limits on second reading, but there are no limits when it goes to committee. I suppose all that does is say that the Legislature itself is not tied up with lengthy, unnecessary debates, but when it goes to committee at least you're tying up fewer people. Maybe there are ways to move on that.

Mr. Chairman: By committee, do you mean clause by clause?

Mr. Breaugh: Yes.

Mr. Watson: We only have debates on first readings.

Mr. Breaugh: Here the potential is to have unlimited debate on first reading, on second reading, on the reporting stage and on third reading. Do we need to have unlimited debate on each one of those stages?

Mr. Chairman: Is that what they're saying?

Mr. Breaugh: No, they are advocating. Our rules would allow you to do that. At every stage, every time it gets reported, every time it gets read, every time a motion is put, you have unlimited debate on it. We rarely use that, but the potential is there.

Mr. Chairman: Maybe when we are dealing with second readings, we would have to say there will be no debate at first reading.

Mr. Breaugh: The reason we do not often have debates on first reading is that we do not often know what you are tabling.

Clerk of the Committee: That could also apply to any private member introducing a public bill. The idea of introduction of first reading is the right of the member to get a matter before the Legislature for consideration. You debate the principle of the bill during the second reading. Technically, you could hold up anything if your private members' public bills and government public bills--

Mr. Breaugh: The only thing that stops me when I introduce a private bill is the tradition of the House that I get to say what the bill is and read a brief introduction. I cannot think of anything on the books that stops me from going on at some length if I really want to.

Mr. Chairman: Okay, gentlemen. In view of the fact that we do not have any representatives from the Liberal Party here, and I know they want to take part in the discussions on this, we will adjourn at page 17 for next week.

The committee adjourned at 11:56 a.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS
REVIEW OF HOUSE OF COMMONS COMMITTEE REPORT
THURSDAY, FEBRUARY 3, 1983

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breagh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Lane, J. G. (Algoma-Manitoulin PC)
MacQuarrie, R. W. (Carleton East PC)
Mancini, R. (Essex South L)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, February 3, 1983

The committee met at 10:22 a.m. in room 228.

REVIEW OF HOUSE OF COMMONS COMMITTEE REPORT
(continued)

The Vice-Chairman: I see a quorum.

Clerk of the Committee: There are a couple of items I would like to discuss with the committee before we get into the report of the special committee to the House of Commons. The items relate to the agency review for the week of February 21.

I contacted the Law Society of Upper Canada, the Ontario Manpower Commission and the Ontario Status of Women Council. We had originally planned for the status of women council to be heard on February 22, the law society had said they would be able to come on February 23, and the manpower commission on February 24.

I've had some calls this week now saying that the law society isn't available all that week. Thursday and Friday the treasurer has to be in convocation for disciplinary matters. Monday, Tuesday and Wednesday up until the early evening hours, he's out of town at a meeting on the west coast.

Ms. Barnes isn't available on Tuesday, February 22 or February 24. I don't know what the committee's wish is. Ms. Barnes is available for February 23, which was the date that we had originally scheduled for the Law Society of Upper Canada. Perhaps we can have the Ontario Status of Women Council on that date. Is it the wish of the committee we just postpone the law society to another date?

Mr. Breaugh: Do you mean to the following week? Is that possible?

Clerk of the Committee: The following week we are going to go to Ottawa, but it's probably possible to put them in on the Tuesday.

Mr. Breaugh: I would be agreeable to that.

Clerk of the Committee: March 1.

The Vice-Chairman: This is all assuming, of course, the House isn't sitting that week, isn't it?

Clerk of the Committee: That's right.

Okay, I'll speak to Mr. Bowlby and see if he's available for that date.

Just to let you know what's happening with the chairman and

vice-chairman of the special committee in Ottawa, I've asked them if they could appear next Thursday or the following Thursday.

I still haven't had any response from them. The chairman said he would get back in touch with me Tuesday or Wednesday, and I still haven't heard. I'm sure that will be today. The parliamentary relations centre in Ottawa is working to set up meetings on March 2 and 3 in Ottawa with the committee. We'll have details on that within the next week or so.

I guess we can just pick up where we finished last week. We had finished at the end of page 16 dealing with speeches. Unless there is any further discussion on that, I will continue.

"(4) Standing order 43.

"Your committee is of the opinion that standing order 43 is being misused, and a substitute mechanism is required which would enable members to raise matters of concern on a daily basis.

"There are a number of objections to the use which is currently made of standing order 43. In the first place the procedure is incomprehensible to the general public. Secondly, the standing order is used for purposes for which it was never intended. It is also open to objection because the refusal of unanimous consent to waive notice can frequently be misunderstood as a declaration of opposition to a well-intentioned motion.

"Standing order 43 is very rarely used for its original purpose of making a motion without notice in genuine cases of urgent and pressing necessity. Your committee has come to the conclusion that it should be abolished, as it appears to be redundant. Standing order 44 is available to ministers when matters arise of an urgent nature calling for immediate consideration. In addition, it is always open to a minister or other member to seek unanimous consent of the House to revert to motions should an emergency situation arise.

"Your committee believes that a new standing order is required which would enable members to make statements on current issues on a daily basis during the first 15 minutes of the sitting in a manner which would remove the objections arising from the present practice. The element of urgent and pressing necessity would be removed and there would be no requirement to seek the unanimous consent of the House or to move a motion.

"Under the new recommended procedure the 15 minutes preceding the question period would be reserved for members other than ministers to raise matters of concern for the purpose of placing them on the record. The Speaker would call the item, 'Members' statements,' as a routine proceeding, preceding the question period. Every member recognized by the chair would be given a maximum of one minute and a half to state the matter he or she wishes to place on the record and, if appropriate, appeal for a remedy. The chair would have the discretion to call to order any member who sought to use this opportunity to convey congratulatory messages or for frivolous purposes.

"Because the present standing order 43 is associated with the undesirable practices which have developed in regard to its use, your committee recommends that the new standing order be given a number other than 43."

The proposal is that standing order 43 be deleted and the standing orders be amended by adding the following new standing order:

"17A. A member may be recognized to make a statement for not more than one and one half minutes. The Speaker may order a member to resume his or her seat if, in the opinion of the Speaker, improper use is made of this standing order."

I think it's been renumbered as standing order 21 now. Basically, the Speaker has cut people off as soon as they have reached the 90-second limit. There was some question recently of one of the Liberal members reading an editorial dealing with Mr. Clark for 90 seconds until he was cut off. The concern was whether it was intended for it to be raised in that period, whether it was being used for frivolous purposes or not.

Madam Speaker undertook to consult with the members of the committee who had proposed this new standing order to see whether that was what they actually had intended to be used in that period and then get back to the House.

Mr. Breaugh: I wonder if it is useful for us to think about something like this. A couple of things come to mind. One is the ongoing problem of the question period and who gets on at question period. We are still, in our own caucus, having some difficulty with that. It still remains that the leader gets the two questions and perhaps one or two, or, on a really good day, three other people get to put a question. That's still having an hour of the business of the House tied up rather firmly in the hands of two people, and on a really good day, maybe half a dozen others.

I wonder if it might be useful to consider a device like this which would allow people to raise a point that's of some concern in their constituency. You wouldn't have the question and answer thing, but it would be another outlet for letting people state what is one of their concerns for the day. I would be interested, for example, in seeing how this is working out in practice. That's one thing that might be considered, perhaps even before the question period begins at 2 p.m.

If we were talking about, as we were last week, changing the times around, you might want kind of an advance to the question period of 15 minutes or so to the question period, where people could go in and raise an issue in that manner.

10:30 p.m.

The other thing which might be useful would be, at the end of statements, to have an opportunity for critics to respond with a brief statement of their own, which Camp and Morrow discussed at

some length and which would also provide another opportunity for someone other than the leaders, to respond in that way.

While I'm not particularly crazy about the format here, or what they are proposing, I would like to see it in use. I am interested in trying to find some means other than a question during question period where people could raise their concerns.

I think the truth is now that maybe in the government caucus there is a bit of an advantage over the opposition members in question period, in that, if you have a local concern that you want to raise, you will have a better shot at asking that during the question period than we would. It's not a big deal

Mr. Treleaven: It's a big deal when government members do it.

Mr. Breagh: Come on, get serious, Mike.

No. I think it is true, for example, that if I had a matter at home that I wanted to raise in here--and it was strictly a local issue--I would be really lucky if I got it on within two or three weeks. Probably I would not, because I have to go to my caucus because of the limited number of spaces in question period. For us it's probable that on a really good day three or four people are going to get a chance to ask any kind of a question. So that is extremely limited.

Mr. Treleaven: No.

Mr. Breagh: In the government caucus there's not that clamour to get onto question period, so you maybe have a bit of an advantage over the opposition members there.

I think maybe we should look around for devices like this which would allow someone to stand up and raise a local issue. If it's only for 90 seconds, that's okay by me, but the member gets a chance to put the thing on the record.

Clerk of the Committee: May I just point out one other thing? In Ottawa, they found members on the government side of the House are getting more of an opportunity to stand up and get some of their points across, too, in 90 seconds.

Mr. Treleaven: Just because something has gone on for several years does not necessarily make it good.

I really don't see why the leaders of the two opposition parties need two questions to lead off. There cannot be two crises or four crises each day in Ontario. At best, there would be two, one that each party wants to bring up.

I see no reason why the leaders of the opposition parties should have two questions. Often they are struggling to find some mom-and-pop issue to bring up as their second question in question period. I would be totally in favour of having them have one question each.

That allowance of two questions is the great time-waster because the leaders of the opposition are stirring up the dust and therefore the leaders of the government party feel they have to stir up an equal amount of dust. I think that is where we usually waste an awful lot of time, with those two questions.

I believe the leaders should have one only, bring up that crisis of the day. If there happen to be two crises that the Liberal Party wants to bring up on a given day, there are 30-odd other people there, very capable of speaking, who can also bring up that second crisis of the day.

It doesn't preclude the second one from being brought up. It simply stops the bogging down, the 45 minutes of the question period having gone when the two men have asked their questions. I see no reason for that. Historically it may have been so. Mackenzie King may set a precedent, but that's not good enough for Treleaven in 1983.

Mr. Breaugh: May I interject for a moment?

I have no problem with that at all. We went around this once before. The hard fact is, it strikes me that the leaders do dominate the question period. I don't see anything wrong with making them pick the one issue they want to go with on that particular day, and if there is a second one, let them come back in. To give them an automatic two-question leadoff every day, however, seems to me to put the rest of us in a really bad position.

I would see this, though, in a slightly different way. I would want to have an opportunity to do this for something which I would not consider to be a matter of great concern to the province, but which might well be something of concern to the people of Oshawa. Really, all I'm looking for is an opportunity to get recognized for a very brief period to put that on the record. It might be useful for us to take a look at this when we are in Ottawa and talk to some of the people there.

More and more, I think that the tragedy around this place is that for ordinary members, who are not party leaders or ministers, have less and less of an opportunity to do anything. Their outlets are getting restricted. If we move to some substantial change in things like the estimates--of which I am an advocate--we are limiting it even further. I am prepared to do that, as long as there are other outlets for John Lane to get up and tell us what is going on in Manitoulin Island or what the biggest problem in Espanola is today.

The Vice-Chairman: Members of the committee, I think we are confusing question period with section 43 a little bit. There is some relationship, of course. The points made by Mr. Treleaven on question period should be discussed when we do the question period.

The point Mr. Breaugh brings up is that there should be 15 or 10 minutes, either in addition to question period or taken off

it, for what we could call private members' statements. That might be a term we might consider using.

Mr. Treleaven: Mr. Breaugh's original suggestion was that it means an elongation of the time the government back-benchers are wasting there when they could be doing productive things for their constituents. If there is additional time, my suggestion is that you are simply using that hour more productively.

The Vice-Chairman: Mr. Treleaven, one solution is that you revise question period by taking the leaders' time away and maybe having fewer supplementaries. The other suggestion is that you either add a period onto question period, or you take a period of time from question period. That was the suggestion; that the question period be only 45 minutes and that we have another 15 minutes for private members' statements. These are the various alternatives we can be considering when we get to the situation.

It does tie in somewhat with question period, yet it could be dealt with independently of question period. Those are the two options we seem to be looking at.

Mr. J. M. Johnson: I like the idea Mr. Treleaven has suggested. I think Mr. Breaugh brought up the concern in the House--or some member of your caucus did the other day--that there wasn't enough time for back-benchers to ask questions.

Would there be anything wrong with exploring the possibility of the two leaders having just one question each? That does not include their asking the second question. If your party agrees there is something of importance that you want your leader to address, that would be his prerogative. No member of your party is going to deny him that opportunity. So they could have the two questions, but on many days I would think they would be pleased not to have two. In a period of a week, it could work out to the benefit of the back-benchers.

I do not think it is going to be that difficult. The biggest problem we would have is the perception that the leaders might feel they are giving something up. If the recommendations of the committee and the advantages that it would serve to the parties were pointed out to them, I think they would be in agreement.

Mr. Edighoffer: I really think we are confusing things here by saying, "Instead of this we should do the other thing." This would be a tremendous change for us here. We just have not had anything like this, whereas Ottawa has. At first, I think I would be hesitant to try it without trying other things to fit in an opportunity.

I agree with Mr. Breaugh that members are having trouble getting in things that affect their own constituency which is the reason they are here. However, I would not make this a priority. That is the way I feel about it.

The Vice-Chairman: If I may summarize, it seems that

members feel there should be time for private members, whether this or some other device is used.

The other thing I have noticed is that, on the leader's question, the leader asks the question, the leader gets a supplementary, the other opposition party gets a supplementary, and then the leader comes back. So there are three supplementaries on leaders' questions, and usually only two supplementaries on the nonleaders' questions.

If you watch the time--as happened the other day when I was not here--it may be the supplementaries and not the questions that take all the time. Perhaps if we cut down the leaders' questions from two to one and cut down one of those supplementary questions on the leader's question that might also help.

Three supplementaries is a lot. What happens is that the opposition parties piggyback onto the first party's lead question and vice versa. So you find that more time is taken in supplementaries.

If we are looking for more time to get more members into question period, and at whether or not the leader's question is taking too much time, maybe we should also be looking at the number of supplementary questions.

10:40 a.m.

Mr. Treleaven: From the point of view of a lawyer who has practised in court, I feel that having a limited number of supplementaries really handicaps the opposition people to start with, because you can get snowballed on two or three or four supplementaries. In cross-examination, you are allowed to go at them with dozens until you finally get some answer.

Cutting down on the supplementaries isn't fair to the opposition. They can get stonewalled easily enough with two or three, and the person answering can flutter them off. Cutting down on that means they can't get even on the surface of the answer, let alone the depth.

Mr. Charlton: On this issue, I have two points. On the suggestion Mr. Treleaven first made about cutting the leaders' questions from two to one, I think Mike and I both expressed the opinion, the last time we discussed this issue, that we could accept that approach. That, in effect, will cut that 45 minutes roughly in half.

I don't agree with the reduction of the numbers of supplementaries, because then the one question each leader asks is going to be the priority question for the day.

I would assume the Liberal caucus operates much as ours does. We sit down every day and have a question period caucus and decide which issues the leader is going to handle. If we are limited to one question, it is going to be the key issue for that opposition party. I think it is necessary that we allow the extra

supplementary on what is perceived by that opposition party as the most important question.

We certainly wouldn't object to reducing the leaders' questions to one. On the other hand, if you turn around and try a new technique and deduct it from the question period--as you suggested--you have eliminated whatever you might have accomplished by reducing the leaders' questions.

The Vice-Chairman: I wasn't making a suggestion, I was trying to summarize the discussion as well.

Mr. Charlton: I just want to put our position that we should not touch question period if we are going to try to make it better for both opposition and government. If we are going to consider the 90-second statement thing, then we should consider it separately from question period and limit it to a very short period of 15 minutes or so.

Mr. Breaugh: Could I make one point from my point of view on this statement stuff? I feel we could move--without really bothering anybody very much--into a statement period similar to what is recommended here and split it. We could say that the government ministers have 20 minutes at the beginning of each day to make their statements and other members have 10 minutes to make whatever statements.

The problem I see--it varies from day to day--is that very often a minister will get up and make a very long statement. Quite frankly, I have no objection to him going outside to the media room and taking an hour if he wants to say something, but if he goes in the House and makes a statement, I do not see any reason why he can't say what he wants to say and announce what he wants to announce in five minutes, at the outside.

Then if he wants to go outside and table further documents and give further detail and grant interviews to the world at large, that is great by me. It seems to me that you can announce almost anything, including the second coming, in less than five minutes' time.

That wouldn't be a bad combination to put forward. We open up the day with the statement period and the government ministers get 20 minutes, split up any way they want. Usually there are no more than three or four statements anyway, but some of them really do go on and on. The ordinary members can then have five or 10 minutes to make their 90-second statements, or whatever, and then we can begin question period. It seems to me that wouldn't be a bad way to organize things.

Mr. Lane: I support that. Ever since I have been here the ministers, in many cases, restate the damn thing about three times. They don't need that much time; it gets boring.

Mr. Treleaven: You have three boilers now, not just one.

Mr. Breaugh: Maybe that is a good example, not to pick on Doug Wiseman at all. That was a statement, classic in nature,

for noncomment. I would like to get up and explain to the House how wonderful the street cleaners in Oshawa are. I see great political advantage in being able to stand up and name them all at length, but I don't think it is terribly relevant for the rest of the world.

Maybe if we are talking about a stated period, we should consider both sides of the House, and the way both sides make statements.

The Vice-Chairman: Just ministers and private members; not both sides of the House.

Mr. J. M. Johnson: I like the idea of statements for the back-benchers as well as ministers. I agree that 20 minutes would be sufficient for all the ministers to divide up between themselves. In many cases, they don't use it. The day they would use it is today, Thursday, when we seem to have three or four come in with long statements. So they could divide it up and stay within the time frame.

I would also like to throw out one suggestion. In Ottawa, they feel they should have 15 minutes for the size of their assembly. I think we could likely get along with 10 minutes for our smaller assembly. It could serve a useful purpose and it could be used in the same way. It is available if a member wants to use it; if they don't, then we could go to question period.

The Vice-Chairman: There seems to be a consensus that we should be discussing private members' statements in some form when we go back after this. There seems to be an idea here that the committee wants to discuss it further, and I think we should do that.

As for the leaders' questions, which really weren't part of this but which have come up, I think it was made reasonably plain by the government members of this committee that that was really more or less the prerogative of the opposition; that the two opposition parties would agree on cutting down the leaders' statements from two to one. It could be done almost informally and every indication was that the government would consent to that.

Mr. Treleaven: That is in the standing orders, Mr. Chairman.

The Vice-Chairman: I know it is in the standing orders about the two statements. We previously had provisional standing orders by unanimous consent of the House and a trial period for a different kind of standing order. I point this out to the opposition parties because I think the government members have seen this.

If the two opposition parties want to do that sort of thing on a trial basis, a mechanism can be found very easily to have a resolution of the House that, despite standing order so and so, for a period of time there will be only one leader's question. That can be done, but I think the initiative has to come from the opposition parties. It is really their question period.

Mr. Charlton: I think the chairman is practising for his 90-second statements, he is talking so fast.

Mr. J. M. Johnson: Mr. Chairman, in fairness, asking the opposition leaders to cut out their time would be, in reality, asking them to admit it has not been used in a productive sense. I don't think we want to put them in that--

The Vice-Chairman: That is why I said that the government members would not object if the opposition parties wanted to spread their question period around because, basically, it is an opposition situation. Any initiative to cut it down from two questions to one should come from the opposition parties. If those two parties agree, the government side would not object to it on a trial basis.

Shall we get on with the next page?

Clerk of the Committee: Page 18:

"(5) Committees.

"(a) Size.

"Your committee recommends that the membership of standing committees be composed of not less than 10 and not more than 15 members. This will provide for the possibility of fluctuations in proportional party membership from Parliament to Parliament.

"Standing order 65.(1) is amended by

"(1) deleting all the words preceding subsection (a) and substituting the following therefor:

"'65.(1) At the commencement of the first session of each Parliament, a striking committee of seven members, the membership of which shall continue from session to session, shall be appointed, whose duty it shall be to prepare and report to the House, within the first 10 sitting days after its appointment, and within the first 10 sitting days after January 1, each year thereafter, lists of members to compose the following standing committees of the House, which shall consist of not less than 10 and not more than 15 members;'

"and

"(2) deleting the reference to the number of members in subsections (a) to (t).

"(b) Substitution.

"In considering the current problems of membership changes, your committee wishes to ensure continuity by limiting the number of substitutions in a standing committee during a Parliament. While the proposal of smaller committees will go a long way towards diminishing the number of substitutions, it does not address the problem directly.

"Your committee believes that, as in the past, the membership of standing committees should be established by the striking committee according to the new proposed standing order 65.(1). In addition to the members named to a committee, the

striking committee would prepare a list of alternates equal in number to the members on a committee, proportional to the parties represented; for each member there shall be an alternate member from the same party. Once the striking committee has reported to the House, the membership and the list of alternates for each committee shall be reviewed and confirmed at the beginning of each winter semester by order of the House. Changes in the membership of a committee will require notification 24 hours in advance of a committee meeting.

"An alternate member could act only in the absence of one of the regular members from his or her own party and could only then be counted in the quorum of the committee.

"Standing order 65.(4) is deleted and the following substituted therefor:

''(4)(a) The membership of standing and joint committees shall be set out in the report of the striking committee, which shall prepare a list of members in accordance with sections (1) and (3). In addition to the members named to each standing committee of the House, the striking committee shall prepare a corresponding list of alternates. Once the report of the striking committee is concurred in, the membership and the list of alternates shall, subject to such changes as may be affected from time to time, cease upon the termination of the last sitting day of a year but shall continue from session to session within a Parliament during that year.

10:50 a.m.

''(b) Changes in the membership and the list of alternates of any standing, joint or special committee shall be effective 24 hours after a notification thereof, signed by the member acting as chief government whip, has been filed with the clerk of the committee.

''(c) The Clerk of the House shall cause all changes in committee membership to be printed in the Votes and Proceedings of the House of that sitting or of the next sitting thereafter as the case may be.'

"(c) Automatic referral of annual reports.

"Your committee recommends that the powers of committees to initiate inquiries be granted through automatic referral of annual reports by departments, crown corporations including their subsidiaries and other agencies to the appropriate standing committee immediately after tabling of such reports in the House. Standing order 41 is amended by adding the following new section:

''(4) Reports, returns or other papers laid before the House in accordance with an act of Parliament shall thereupon be deemed to have been permanently referred to the committee designated by the member tabling the report, return or paper.'

"(d) Government response to committee reports.

"Your committee further recommends that the government be required, if a committee so requests, to table a response to committee reports within a fixed period. Standing order 65 is amended by adding the following new section:

"(12A) Within 120 days of the presentation of a committee report the government shall, upon the request of the committee, table a comprehensive response."

"(e) Special committees.

"Your committee believes that the recent experience with task forces was of great value and that the mandates of special committees should follow the example of those task forces. In particular, the size of special committees should be kept as small as possible. There should be no changes in membership unless agreed to by the committee. Special committees should have authority to make interim and final reports public, even though the House is not sitting; to hire expert staff in addition to the existing parliamentary resources in appropriate circumstances; and to travel. Finally, their reports should be submitted by a specific deadline."

The Vice-Chairman: There are two parts to this. One is the mechanics, which is size of committee, striking committee and substitution changes. I really do not think they are much of a problem in this House.

The second part is the automatic referral of reports and government response. Can we deal with the mechanical part of it first, if there are any comments on that, and then deal with the other part?

Mr. Breaugh: All of this stuff on committees pretty well parallels the recommendations we have made from time to time about committees. The differences are in the first section, recognizing that one House is much larger than the other. We have already considered most of this stuff and most of the personal points are actually things we have already recommended. I am fairly supportive of this section. The only difference I see is that they are adopting the mechanics of it to a larger House.

Clerk of the House: In Ottawa, the committees are established by standing order, whereas in our sessions--except for the procedural affairs committee and the public accounts committee--the House leader has to move a motion establishing the committee and setting out their terms of reference. In Ottawa and Quebec and a number of other jurisdictions, they just put it in the standing orders and the membership is appointed.

The Vice-Chairman: Ottawa has a striking committee which names the committee. That is done here by our House leaders or whips. Each caucus has a process unto itself and it all gets into the House leader's hands with a motion. Does anyone feel there should be some kind of striking committee or is our committee system working fine?

Mr. Watson: I think you have to settle with the present

system we have. If there were 100 more people around here it might be a problem. Our problem is the other way; it is juggling to see if you are here, you cannot be there.

Mr. Charlton: Basically the recommendations in our report on committees deals with our committee system in relation to the size of our Legislature.

The Vice-Chairman: Nobody really feels the need for a striking committee. The size of committees is not really set by our standing orders. I do not think there is any problem with the size of committees here, is there?

Clerk of the Committee: No, it says a maximum of 15 per select committee.

The Vice-Chairman: I mean there is no problem with the size of committees in our House and we have really no problems with day by day substitution or change in committees. It is just done by resolution. I do not think it is necessary to have a numbered alternate in our House, is it? I think we can say that part of it looks interesting, and we do not have to do anything about it.

The other part, the automatic referral of annual reports and government response--

Clerk of the Committee: We might just talk about substitution of members because that was an item that was raised at the meeting of the chairmen of committees last November or December. There was the issue of how the acceptance of substitution notices varies between committee and committee.

In some committees, it is one half hour after the committee begins its proceedings; in some it is halfway through the committee. Some members were finding it difficult actually knowing when substitutions were being accepted because it varies from committee to committee.

Mr. Breaugh: The only problem I see there is that there should not be a variance from one committee to another. The chairmen should arrive at a common position of when the substitutions are admissible and that should apply in justice or resources or wherever.

It seems to me that we spend a fair amount of time on problems about substituting all over the place and that has diminished somewhat. But in the process of tightening up, the chairmen of committees have been a little on the loose side. It should not be difficult to come up with one standard procedure that everybody uses.

Clerk of the Committee: The problem was that the order of the House says that substitutions are permitted provided they are given to the chairman of the committee before or early in the meeting. Some committees have interpreted "early in the meeting" differently to other committees. The chairman I think basically agreed--I do not know if you were there, Dick--that half an hour

into a meeting from the time a meeting started was a reasonable point at which substitutions were accepted.

Mr. Breaugh: You see, I think all you really need there is that after a meeting starts, if you have to go and get a little note from your whip--which I object to somewhat--as long as there is a reasonable length of time there to give you the opportunity to get that little note from your father, I cannot object to that. All I would be looking for after that is some consistency.

The Vice-Chairman: Not for this meeting but when we get to it, that clause on substitutions should be put in there to standardize it, either formally in the standing orders or informally as standardization of the substitution process. Is that agreed?

Mr. Treleaven: I take offence to Mr. Breaugh's reference to my looseness. John thinks that is the women I consort with. I thought it was my diuretic problem he was referring to. He should explain a little more carefully about my looseness.

Mr. Breaugh: You are bragging again, Dick.

The Vice-Chairman: The next clause in here is automatic referral of annual reports.

Mr. Eichmanis: The problem here is that there are a number of ministries and agencies who do not have statutory reports.

Mr. Breaugh: At one point, did we not say there should be some conformity there; that the distinction between the statutory obligation and an obligation for public relations purposes should be taken away and that all of them, if they issue an annual report, should all come in on the same basis? That obligation should be on them in a formal way. They should get tabled and subsequently I think we said they should be automatically referred.

Mr. Eichmanis: Would this not require a change in the standing orders?

Mr. Breaugh: Yes.

The Vice-Chairman: Our standing orders now say that they be referred by a petition of 20 members--

Clerk of the Committee: It specifically refers to a statutory annual report.

Mr. Charlton: Again, we dealt with that in our report; the automatic referral.

Mr. Eichmanis: All reports, irrespective of whether they are statutory or not--

Clerk of the Committee: You see, the problem you run into there is that the Ministry of Consumer and Commercial

Relations is not bound to present an annual report. There has been a tradition established where they present a report, but if one year they decided not to, there is nothing to require them to do it.

Mr. Breaugh: I have some concerns about that area. I think there is some unfairness there. Some of the ministries and some of the agencies are required by law to table an annual report and others are not. I think that is unfair. That is making a distinction there. The second thing which is still a bit of a problem is that even among those who are required by law to table an annual report within certain time periods, that is very often still ignored. It is better than it once was but there is a lot of looseness around that.

The unfairness in it is that one ministry takes their legal obligations to table an annual report very seriously, goes through a lot of time, effort and money to meet their legal obligations, while another ministry may have the same obligation but may say they have not gotten around to that yet and nobody does anything about it. There are still others who have no legal obligation to do that.

Clerk of the Committee: The Speaker pointed that out in his last ruling dealing with standing order 33. I think as time goes on we view it in different circumstances. Those reports, if they are statutory annual reports, whether they be of a ministry or an agency, board or commission, have to be presented to the House before the estimates are considered.

11 a.m.

Mr. Breaugh: If they do not, what happens?

Clerk of the Committee: Then it is an effective way for them not to be considered. They would raise it as a point of order.

Mr. Breaugh: When was the last time that happened?

Clerk of the Committee: I do not know if it has ever happened.

Mr. Breaugh: I do not think it has either. That is my problem. There are a lot of blind eyes being turned on this stuff. In my view, everybody ought to have the same legal obligation to table an annual report. I do not think that is too much. Most of them do it anyway. Second, if they do not, there ought to be some mechanism to get them to do it in short order.

The Vice-Chairman: That is something that you--

Mr. Charlton: I have to agree with Mike's position on this. If you think back to 1977 when we got into the big kerfuffle here about how many agencies, boards and commissions there were in this province, no one knew and the government set up a committee. This committee started looking at that sector. We went through about a nine-month process before we could even identify a number, let alone identify the names of them all.

If there was a statutory obligation on all ministries, agencies, boards and commissions to table an annual report, we would never find ourselves in that position again. We may find ourselves in the position where no one had been closely watching certain of those agencies, but we would at least have a good handle on who they all were.

The reality is that as long as we leave the situation as loose as it is now--although for the last five or six years we have been concerned about this issue--20 years down the road, we are going to be back in the same bind of somebody raising the question of how many of these hidden bodies we have out there.

The Vice-Chairman: But you would not want the Wolf Damage Assessment Board to have to provide an annual report.

Mr. Charlton: I do not care if it is only five paragraphs.

Mr. Eichmanis: I think in some circumstances, the annual report of an agency appears in the ministry's annual report. That is considered to be an annual report of the agency. It does not have to be a separate--

Mr. Charlton: That is perfectly satisfactory, as long as they have one from every body that is out there. If the ministry wants to do an annual report which includes two pages on each of the agencies under that ministry, that is fine.

Clerk of the Committee: Just as an example of that, the annual report of the Ministry of Consumer and Commercial Relations contains the statutory annual report of the Pension Commission of Ontario and another agency, board or commission. It is an unusual situation where you have a report which is not required by statute containing reports which are required by statute.

Mr. Watson: One of the problems of trying to standardize them is the length of time it takes some of the people to prepare an annual report. I am thinking of people who have to collect records and ensure their accuracy. Some people are going to have it a month after the year-end and they are always going to be at least a year behind.

Mr. Breaugh: But no one has said that this all has to arrive here on the same day and in the same kind of package. All I am saying is that if I, for example, were a municipal council, I think that the fire department, the police department and everybody else I fund has an obligation once a year to sit down and write up what they did that year and how they spent their money.

If we want to go into all of the agencies out there that are into big, glossy annual reports, that is another matter. I am saying that once a year, there ought to be a requirement that they all report to that ministry and to the Legislature. That gives them a year's leeway. How much more time can they need than that?

You are right. There may be agencies that have a great deal

of information to collate in their annual report, in which case, they have got a year to do that, or six months after the fiscal year, or whatever. I am prepared to give them all kinds of leeway on that, but once during that year, they have to report that they are in existence and what they did.

Mr. Watson: If you are going to say that, and you are going to say that it is to be a part of a ministry, I am afraid that you would hold up a ministry report for a time. That might be a legitimate concern.

Mr. Breaugh: No. Why would we do that? Why would we be holding up a ministry report for an agency report?

Mr. Watson: One of the ways I would see this functioning would be as was suggested, that when a ministry's annual report comes in, the agencies, boards and commissions responsible to that ministry, will be within that report.

Mr. Breaugh: That is not a requirement now. Why would it be a requirement--

Clerk of the Committee: To give you a further example, the annual report of the Ministry of Consumer and Commercial Relations contained two statutory annual reports, but it did not contain the statutory annual report of the registrar for loan and trust corporations, who issues a report separate from that of the ministry.

The Vice-Chairman: Under the present standing orders, only the ministries that are required to present reports for statutes, have to do so within six months of the active reporting period. If it is a fiscal year, they would have to do them by the first of October.

There seems to be a feeling that we should be looking at expanding the requirements for statutory annual reports beyond those that are there now. The second part of this--which obviously the New Democratic Party wishes to pursue--is whether those reports that are tabled in the House shall automatically be referred or whether we shall keep the present standing order of a petition of 20 members.

Mr. Breaugh: When the committee went at that before, the argument was basically this: since we have a provision now that 20 members can sign a piece of paper and get it out anyway, why not make that automatic?

The 20-member provision is really not much more than passing a piece of paper around and getting 20 people to sign it and out it goes. I do not think there is much of an argument left to work against an automatic process. All you are doing is inconveniencing someone and increasing the paper flow. Why not just have it an automatic process that when the annual report is tabled, it is referred?

For example, with the 20-member provision, there is no vote on that. There is an opportunity for the Speaker to inform the

House that rule has been exercised and that report is now referred, but the House does not even have an opportunity to say they do not want it referred. I think the easier and smootner way to do that is to simply have them referred automatically. They are going to get there anyway.

The Vice-Chairman: The point is that right now, we are not here to make decisions. Because of your concern, it has to be put onto the agenda. The possibility could arise that in the next election, you could lose four seats and it would then be a lot harder for you to get 20 members.

Mr. Breaugh: We have 30 members now. That will only take us down to 26.

The Vice-Chairman: "(d) Government's response to committee reports." The government has to respond. That has already been done by this committee.

Has anyone got any concerns about how we select select committees?

Let us proceed on to page 20, private members' business.

Clerk of the Committee: "Your committee recommends that the restriction to one notice of motion at a time on the Order Paper for private members be removed. Your committee recommends the three categories of private members' business be combined to form one list for precedence: public bills, notices of motion and notices of motions (papers), including motions not yet disposed of. This new category would have precedence assigned by the Speaker for one item per member based on one draw using the names of members only. Precedence for the remaining business would be assigned in the normal way, both for this new category and for other categories of private members' business, as well. Precedence for public bills, notices of motions and notices of motions (papers), at the start of the session, would be established in the following manner. Members would signify in writing to the Clerk of the House their desire to introduce a bill or to propose a motion some time during a session. A draw would be conducted by a representative of the Speaker using those names of members who have given this written notification to establish a sequence of names. The names would be printed in sequence on the Order Paper in a section entitled 'Public Bills, Notices of Motions and Notices of Motions (Papers),' under the heading 'Private Members' Business.' It would be used by the Speaker throughout the session to establish precedence for one of the above items of business, ahead of additional ones, of which members may give notice from time to time. Members could wait during the session before giving notice of a bill or motion, but at least two weeks' notice for a motion or two weeks between the first and second reading of the bill would be necessary before consideration. Members would have to judge by looking at the Order Paper when their item could be reached. When a particular item is considered by the House and not disposed of in that sitting, it would be placed for the next sitting, as before, at the bottom of the list. The member's name will then no longer appear in the sequence established by the draw."

"Your committee further recommends that debate on any item of private members' business be interrupted after one hour.

"Standing order 20.(1)(e) is deleted and the following substituted therefor:

"'(e) Second reading and reference of bills to a committee, notices of motions and notices of motions (papers), precedence being assigned by the Speaker on the basis of a draw;'

11:10 a.m.

"Standing order 20 is amended by adding thereto the following new section:

"'(1A) Proceedings on any bill or motion in the name of a private member shall be interrupted one hour after being taken up and considered.'

"Standing order 42 is amended by adding the following new section:

"'(1A) In the case of Private Members' Notices of Motions at least two weeks' notice shall be given.'

"Standing order 49.(3) is deleted and the following section renumbered.

"Standing order 72 is amended by adding the following new section:

"'(2) Subject to section (1) at least two weeks shall elapse between first and second reading of private members' public bills.'"

The Vice-Chairman: We have a procedure which is probably somewhat similar to what they are recommending for every Thursday.

Mr. Lane: We don't always get two hours. Sometimes if there are a lot of special orders and so forth there is less than two hours left for the debate. Basically, it runs about an hour each anyway.

The Vice-Chairman: Usually an hour. Does anybody want to have any discussion on the private members' hour or shall we just say we're happy with the way we are at the moment?

Mr. Watson: No, we are not. I think we have to look at this in total if we're going to consider a different timetable around here. For instance, are we going to suggest that the Legislature meet Wednesday? If we are, then private members' hour could be held, theoretically, when cabinet meetings are being held because they don't take part in them as a normal process anyway.

I don't know why we take Thursday afternoon for private members' hour. I think we should look at it in the context of the total timetable here or the total timing of when the Legislature

sits and not be satisfied with your statement that we're happy with the way it is and it should stay the way it is.

Mr. Lane: I think we dealt with that at some length a couple of weeks ago. I assume that will be dealt with when we make the report.

The Vice-Chairman: There is a difference between considering what day the private members' hour will be and the process. All we're discussing now is the process of the draw and two members per session, whatever length of time that is.

Mr. Breaugh: There are a couple of areas that I would like to consider about private members' hour. I admit I am very flexible about timetabling and perhaps even come down on the side that we shouldn't be taking Thursday afternoon for private members. I have no problem with the balancing system. It seems to me that has worked out reasonably well. There is a little bit of fancy work around the edges which I am not terribly happy about, but it's not a major problem.

There is one thing that does bother me a bit about private members' business and I don't quite know how this came about. We've almost fallen into a tradition, which we are out of a little bit but lurch back into from time to time, where it is private members' hour for about two hours on a Thursday afternoon and then all of a sudden, when the bell rings and the votes are called, it is no longer private members' hour. It then becomes a party function. You can talk all you want and say what you want, but when it comes voting time the whips are out and everybody is dragooned in there.

One of the things we might consider is moving the time. It just happens that on Thursday afternoon most members are around anyway, up until about six o'clock. Maybe it wouldn't be a bad idea to move your private members' business to some other time and let it be a completely free vote so you get an indication of how many members are actually interested in that, how many would set aside an hour or so of their time Friday morning or Wednesday morning or an evening session or something like that. So part of the challenge of putting forward a bill or a motion, would be to go around and gather up support from individual members and see how many will show in there.

Some of you may want some kind of a safeguard which says that if you can't round up half the members of the Legislature who are interested in your private motion or bill, the thing doesn't count anyway. You can have almost kind of a quorum call idea in it. I would be prepared to entertain some ideas like that.

My only concern about private members' business here is the end of it. It seems to me the balloting works all right. It has been a fairly useful vehicle for people to put forward an opinion in one form or another. The only real problem we have ever had with private members' business here happens around 5:45 p.m. If we could somehow beat the system in the last 15 minutes, we would have something which might be useful.

Mr. Watson: The other side of that is that so many of the private members' bills or resolutions are contrary to government policy.

Mr. Breaugh: That's the point right there. A private member's bill, if we get it to some point where it's a useful piece of business, has nothing to do with government policy or opposition party policy. Not everybody uses them in that way now.

Mr. Watson: That's fine if they didn't. We can look back and say that on issues where they don't deal with the government policy, you get it. You get what is called a free vote. You vote how you want. But if you're going to bring in resolutions or things that are dynamically opposed to present government policy, you're going to get government members voting against them.

Mr. Charlton: Just on that point, I don't understand the reality of that concern.

Mr. Watson: Well, I do.

Mr. Charlton: The bottom line is that we have had private members' bills pass second reading in this place and they never go anywhere anyway. When it gets sent to a committee, the committee has the option of whether it ever deals with the bill or not. The government has the total and complete responsibility of deciding whether or not it ever gets called for third reading. What is the problem with, on private members' business alone, allowing members a free expression on that issue, whether it deals with government policy or anything else? What is the real concern?

Mr. Watson: There is a free vote.

Mr. Charlton: We are prepared on private members' business to let our members vote against our party policy. What's the concern over there?

Mr. Watson: So are we.

Mr. Charlton: But you don't.

The Vice-Chairman: You don't split on a vote when it's a matter that really is your party policy. I think Mike has put his finger on it. If we could somehow devise a rule--and this is going to be very difficult--to have private members' bills or resolutions deal with matters which are not normally dealt with by the House, they could deal with matters of conscience, matters of local interest--I don't want to use the word noncontroversial but--matters which do not fly in the face of government policy or opposition party policy but are truly private members' issues.

Mr. Charlton: I don't think there is any such animal.

The Vice-Chairman: Yes, there have been a number of issues come before the House where we have had all three parties splitting because they were not issues which addressed either government or opposition doctrine or dogma, if I may use those words. How you could ever draw a rule to limit private members'

business to nongovernmental business or nonparty policy would be totally impossible.

Mr. Charlton: Even if you can find the occasional one, as we have found, the reality is that there aren't two of those every week. They don't exist.

The Vice-Chairman: With all respect, I think Mr. Watson has put his finger on it. When an opposition member brings in a bill, which has been done many times, which may be on the same topic as a government bill before the House or government legislation, that is really amending existing legislation on which the government has a very firm, stated policy. The opposition member's bill flies in the face of that very firmly stated government policy. You would have to agree it would be pretty difficult for government members to, in effect, vote against existing stated government policy.

Mr. Breaugh: One of the illusions we had when we set up this kind of a private members' day, was that it was felt at that time that we could change the nature of a parliament. For example, if this was done in an American legislature, there would be no problem with this at all. Every day of the week those people go in and assume their seats. Some days they are Democrats and some days it's pretty hard to tell that they're Democrats, they look more like Republicans. They move back and forth.

The Vice-Chairman: They don't have the party system that we do.

Mr. Breaugh: They have a party system, but they do not have a parliamentary system, to make that distinction. One of the problems we have run into with private members' hour is that it doesn't fit very neatly into the parliamentary process. Everybody--like robots almost--feels the powerful obligation to support your party in whatever is being discussed, even if it's an inconsequential item. If it smells like some other party's policy, you vote against it. There is a great instinct in it.

The major problem is that we scheduled that into an afternoon session when the whips are still around and still operative. It strikes me that timetabling is part of the problem. The part of it we're never going to beat is the parliamentary system which dictates that you adhere almost fervently to the positions of your political party.

The Vice-Chairman: With respect, I don't think you could ever attempt to draw a standing order to the effect that votes are going to take place when you assume members won't be there. You have to assume that on every vote 125 members are available.

11:20 a.m.

Mr. Charlton: Again, let us discuss some of the realities. I understand what you are saying, Mr. Chairman. If we do a private member's bill that is on a labour issue that flies in the face of government policy, even if some of the government

members agree with it, they find it very difficult to get up and vote against a very clearly stated government policy.

On the other hand, if we make the very clear understanding among everyone in the House that private members' is private members', and government members want to disappear for that vote because they don't want to embarrass the party by voting the wrong way-- The same is true for us. We have had government bills that fly in the face of our party's policy. Two thirds of us may want to go in and vote against that bill, but there may be a third in our caucus who would prefer to disappear than to get forced into voting against that bill.

It is private members' hour and because the government has total authority over whether or not that bill proceeds any further than second reading, what is wrong with a handful of government members disappearing, or a handful of opposition members disappearing if they can't bring themselves to vote against it?

The Vice-Chairman: We are discussing what we are going to discuss and put into standing orders. There is nothing you can do, as far as standing orders go, about members voting or not voting. Those who are in the House vote, and those who aren't, don't. As for the whips, and so on, there is nothing you can do in standing orders.

Mr. Breaugh: Let me put a couple of proposals to you. When we rewrite this thing, if we do, I would suggest that this gets timetabled in a different way in a different time; I agree with several other members about that.

The one little problem I have is the last 15 minutes of the voting part of it. What if we went to a process where we said that anybody can bring in a bill or a motion--I don't think you can mess around with that--and you have the right under a balloting system to eventually have that called and a debate will be held?

To sort out those matters, where this is really private members at work as opposed to somebody putting forward a particular party policy, what if we said you can get second reading of your bill, you can have your debate, but to get it to proceed you must get X number of members to vote in favour of it?

In other words, if 60 members of the House were present and voted for a bill or a motion, that would then get automatically ordered to committee and would get dealt with. So you let the members choose what they just want to have a debate about and what they really want to do something about.

If I have a private member's bill that says you can't bring handguns into the Legislature, and I am able to convince 60 or 75 people in all the caucuses, "Okay, let's deal with this thing Thursday night and we will all rearrange our schedules and go in and do that," that will automatically put that to the justice committee for a clause-by-clause debate and that matter will come back and be dealt with, automatically.

The Vice-Chairman: What you are really saying is that if

a majority of the members of the House, rather than a majority of those present--

Mr. Breaugh: That's right.

The Vice-Chairman: --vote for a motion, it would get referred to--

Mr. Breaugh: It would be almost like a quorum obligation on the individual member, the private member, to go around and dig up the quorum. If he manages to succeed in getting a quorum present when that vote is taken, that means that particular matter must go on to the agenda of a committee and must come back to the House and be dealt with. That gives me as a private member, if I have got something here which cuts across party lines and which all of us feel ought to get dealt with, a mechanism to do that.

I also have the option then, as now exists, that if I just want to put forward something for purposes of debate, I can do that as well. So it gives the Legislature a bit of a choice to decide whether it is something we would really like to have dealt with. If we get this number of people participating and voting on the debate or you get, as David suggested, a majority of the Legislature votes in favour of a particular bill, then it gets order. That gives us that little leeway.

I am not suggesting it is going to solve all the problems, but on those rare occasions when something is put before the House which they do want to do something about, there is a mechanism which allows that to happen.

The Vice-Chairman: With respect, Mr. Breaugh, I would suggest that under the present rules if you had 63 members in favour, it would go through anyway.

Mr. Breaugh: Not true. I will point out to you examples of bills which have gone on from second reading in here--private members' bills which had in excess of that--and have not gone anywhere, simply because there is no mechanism to get them called in committee or to get them brought back into the House.

The Vice-Chairman: If you had your automatic mechanism, which meant the bill had to go to committee, you might find fewer people supporting it in the House and have those--

Mr. Breaugh: That may be true, yes.

The Vice-Chairman: Again, if the will of the majority of the House--which is really what governs this House at all times and in this present situation means at least some government members--wants it to be dealt with in committee, it is going to happen. If the will of the majority of the House doesn't, it will not happen, whether you put a new rule in or not.

Mr. Breaugh: I would differ with you on this one.

Mr. Charlton: The reality of the will of the majority is a very vague reality. You will recall six years of minority in

this province when, on a substantial number of occasions, the will of the majority was blocked by that little procedure we have. Let's talk about realities, not about myths.

Mr. Breaugh: At any rate, I don't think we are going to resolve this here today.

Mr. J. M. Johnson: I think if we want to get serious about it, we should address the nature of a bill that you know damn well, before it even starts, hasn't a hope. That is not being sensible, that is playing politics. If you want to waste an afternoon on it, that's fine, you have a chance to debate but you know it's not going anywhere. You people do it the same as we do it.

I think an example of a bill that was dealt with fairly was Runciman's a couple of weeks ago which over half of the Liberals supported. If they hadn't, it wouldn't have carried, because our people were split. Your people were solidly opposed to it, so it works both ways.

There is a bill coming up, maybe today or next Thursday, whenever we have an opportunity, by Dick Ruston. That is a bill that, I think, will receive support from most people and might achieve the purpose it set out for. It is the type of bill that means whether it goes ahead or not.

Regardless of what we do with the rules, if it is contrary to government policy, it is not going to carry. If it is opposed to the position of your people, you won't support it. That's only natural. So we have to decide: Is it really a private members' bill and what is the purpose?

Mr. Breaugh: I am trying to find some mechanism which allows the Legislature to sort out those things that are really private members' bills and have nothing to do with your party affiliation. I am not even trying to stop those matters which you just want to put on for purposes of debate.

The Vice-Chairman: Members of the committee, I think what Mr. Breaugh is saying, and what everyone is saying, is that if we can distinguish between the truly private members' nonpartisan bills and the other kind, maybe we should have a different mechanism. Whether that can be done or not is a difficult question, but I think it is something we would be considering when we go back to the standing orders.

Mr. Watson: Mr. Chairman, I think we have an issue here; we have the matter of debate and we have the matter of vote. For instance, when we have an emergency debate, we don't have a vote on that particular resolution or motion. You use that opportunity for debate, for putting forth your point of view.

People want most of the resolutions and private members' bills on primarily for the debate. The result as to whether it carries or doesn't carry becomes, in most cases, secondary. It isn't going to go anywhere anyway, unless the government directs that it go.

Mr. Breaugh: There is an interesting alternative which Andy has just suggested, which we might consider. All we need is a mechanism which allows the House to decide whether it is going to proceed anywhere or not. You may want to do that at the beginning of the process, where the members initially decide whether they are prepared just to debate it or whether they are prepared to have a vote on it.

Mr. Watson: I don't know whether I am prepared to, but let me throw out what I was thinking about. The difference between a resolution and a bill; maybe resolutions don't have to be voted on but maybe bills do because of a legal point, I don't know.

Personally, on things I have brought forward in private members' hour, quite frankly, I didn't care if there was a call at the end for numbers or not. I think it was a frigging nuisance.

Mr. Breaugh: Maybe that could be the kind of mechanism.

Mr. Watson: Why do we vote on a private member's resolution when we don't vote on an emergency debate and we don't vote on reports? When we debate the reports that committees put in, we don't vote.

Mr. Charlton: Some we do, some we don't.

Mr. Breaugh: Maybe that's a mechanism--

Mr. Watson: The discussion is more productive when you don't have to justify your position by standing up at the end.

The Vice-Chairman: I think you have exhausted the subject for this part of it.

11:30 a.m.

Mr. Edighoffer: There is lots you can talk about this, but I think the main thing is you really have to be hard-nosed about it and decide whether you want it to be private members' afternoon or evening or hour or whatever the heck you want.

To me, two simple little things that you could do would be to do away with the blocking of the vote completely and say that everybody votes on either of the items, if there are two items. Then you would vote the same as you vote in committee of the whole House, in block and not recorded. That seems to be where a lot of the fear seems to come in. You just count the numbers. That sort of goes back to what Mike said. To me that is just a simple little thing.

Mr. Charlton: I think we can buy that in everything except the blocking procedure.

Mr. Edighoffer: If you want a private members' hour, I would do away with the blocking procedures, I really would.

Mr. Edighoffer: Yes, I think so.

Mr. Breaugh: I think there are some mechanisms in what has been talked about--

The Vice-Chairman: I think we have some ideas here that we can deal with. We proceed then on to the last section here which is the bottom of page 21.

Clerk of the Committee: "Continuing review of the standing orders." This next couple of items incorporates some of what we already do.

"The committee recommends that the standing orders be permanently referred to the standing committee on procedure and organization and that the procedures of the House and its committees be kept under continual review by that committee. Furthermore, at the beginning of the second sitting period of the first session of each Parliament, one day should be provided to introduce a motion to enable members to express their views concerning the procedures and standing orders of the House. This motion would be debatable for one sitting day with a 10-minute time limit for speeches.

"Standing order 65.(1)(r) is deleted and the following substituted therefor:" This is just adding this committee to the list of committees established by standing order.

"'(r) Procedure and organization, which is empowered to consider on its own initiative the standing orders of the House and procedure in the House and its committees;'

"The standing orders are amended by adding the following new standing order:

"38A.(1) Between the first 60 and 90 sitting days of the first session of a Parliament on a day designated by a minister of the crown or on the 90th sitting day if no day has been designated, an order of the day for the consideration of a motion 'that this House takes note of the standing orders and procedures of the House and its committees' shall be deemed to be proposed and have precedence over all other business.

"(2) Proceedings on the motion shall expire when debate thereon has been concluded, or at the ordinary time of adjournment on that day, as the case may be.

"(3) No member shall speak more than once or longer than 10 minutes."

The Vice-Chairman: Is there any merit in this suggestion or do we feel this committee reviewing standing orders, the procedural committee, is sufficient?

Mr. Breaugh: I think ours is just as good if not better than what they have.

The Vice-Chairman: No one wants to say anything more about this section? We will move on.

Clerk of the Committee: "Your committee recommends that whenever the attention of the Speaker is drawn to the lack of a quorum in the House, the Speaker shall immediately direct that the House be counted. If fewer than 20 members are present, the Speaker shall order the bells to be rung for 15 minutes. When the bells cease to ring, a count of the members present in the House at that time shall be taken. If fewer than 20 members are present, the Speaker shall order the names of those present to be recorded, and adjourn the House until the next sitting day.

"Standing order 3 is amended by adding the following new section:

"(2A) If, during a sitting of the House, the attention of the Speaker is drawn to the lack of a quorum, the Speaker shall, upon determining that a quorum is lacking, order the bells to be sounded to call in the members for no longer than 15 minutes. Thereupon a count of the members present shall be taken and if a quorum is still lacking the Speaker shall adjourn the House until the next sitting day."

The Vice-Chairman: Smirle, do you know what the rule was before they adopted this one in Ottawa?

Clerk of the Committee: I am not sure.

The Vice-Chairman: Because this is the same as our present rule except we have four minutes instead of 15.

Mr. Lane: And the Speaker can decide whether it is tomorrow or today or whatever.

The Vice-Chairman: No, if there is no quorum the House adjourns in our House now.

Mr. Lane: It has not always done that in my time here.

Mr. Edighoffer: "(1) At least 20 members of the House, including Mr. Speaker, shall be necessary to constitute a meeting of the House for the exercise of its powers.

"(2) If, at the time of meeting there is not a quorum, Mr. Speaker may take the chair and adjourn the House until the next sitting day.

"(3) Whenever Mr. Speaker adjourns the House for want of a quorum the time of the adjournment and the names of the members then present--"

The Vice-Chairman: So really they have added in what we have now. The only thing I think we should be considering then is whether the four minutes we have now for a quorum call is the right amount of time.

Mr. Watson: Why do we have a quorum?

Mr. Treleaven: Oh, we have to have a quorum, otherwise you have two--

Mr. Watson: You have to have five people there if something comes up to call for a recorded vote, so therefore every party has to have five people there.

Clerk of the Committee: You do not have to have five people to call for a quorum.

Mr. Breaugh: There is a problem here which has two parts. First, I think the quorum is necessary because it is really dangerous business, particularly when you have legislation going through. You may well wind up with five people there, but the five people there may consist of three who know what it is all about and two who just happen to be there.

I think a quorum is good insurance for all parties concerned. I think a quorum is necessary. The one change we ought to make here is that the bell ought to be changed. For example, on one occasion in the fall session, the bells stopped ringing, the count was taken, and there was a quorum in the building, but it happened to be right at eight o'clock and there were members coming back from dinner outside the building, members who were on the phone. If you had given the whips another 10 minutes, they would have had a quorum in there and the House could have proceeded.

I think it is a little bit foolish to put a short time bell on a quorum call. All you need is 20 members. If you could give any of the whips 15 or 20 minutes, they could round up a quorum to proceed with.

The Vice-Chairman: I agree with what you say, except let us look at the other side of that coin. From time to time, without mentioning any names or parties, some members use quorum call as a way of filibustering or a way of interrupting debate. If you put in a 15-minute bell, as they do in Ottawa, someone could raise it three or four times a night.

Would you be interested in the kind of a clause that says the bells shall ring for a maximum of 15 minutes but when Mr. Speaker deems there be a quorum in the House he orders the bells to stop?

Mr. Charlton: I do not see any reason why it has to be a 15-minute bell. To a maximum is fine. When the Clerk and the Speaker can see the 20 members, the bells should stop and the House proceeds.

The Vice-Chairman: There seems to be some agreement that instead of four minutes, the bells should ring for a maximum of 15 minutes and Mr. Speaker can stop them anytime when he sees a quorum. Would that be something we should consider?

Mr. Lane: The way we are spread around in this great complex of ours here, there is no way we can get here in four minutes anyway. If it starts when I am in my office, I cannot get there.

Mr. Watson: I think that is a good idea. I would like to

pursue that one because where my office is, when the bells start to ring, the first thing is you have to hit the phone to find out why the bells are ringing. If it is a quorum call, forget it. I cannot make it and John is in the same boat. If the bells are sounding because it is a quorum call, forget it, because we cannot physically make it.

The Vice-Chairman: There seems to be consensus that is a good idea. It is recorded, so let us just proceed, shall we?

Mr. Edighoffer: It is already recommended changing from a four-minute bell to a 20-minute bell, or 20 members. That is really the same thing.

Mr. MacQuarrie: I think I agree with the bell question, Mr. Chairman, and I think there is a necessity for a quorum, but what is so magical about 20? We see 20 in the House of Commons, if I am not mistaken. They have 200 and some members.

Mr. Breaugh: I asked that question before. It is very arbitrary and it came out of Camp and Morrow. The feeling was simply that a minimum of 20 people gave you representation probably from most of the caucuses. In other words, you were not going to get caught with one or two people from the government side or the opposition parties. It is an arbitrary number. It has not posed a great problem to my mind, but if someone wants to say 10 per cent of the House or 12.5 members--and I have been in there when there were 12.5 members present--sure, why not?

The Vice-Chairman: Which party had the 0.5?

Mr. MacQuarrie: How many members made up the 0.5?

Mr. Breaugh: Your party has 0.8 members over there regularly.

Mr. Watson: Why is it the responsibility--I guess one of the things that irks me was being told across the House one night that it was our responsibility to maintain a quorum.

The Vice-Chairman: I might point out that 20 members is under the Legislative Assembly Act, not just in the standing orders.

Mr. Watson: Why is it the government's responsibility to maintain the quorum?

Mr. Charlton: You are talking about a specific situation when those calls went across the House. If you have a government priority bill for which the government has changed the order of business to deal with, then it is the government's responsibility to maintain the quorum. On private members' business, when my bill is up, then it is my responsibility to maintain the quorum if I want to proceed with that bill.

11:40 a.m.

Mr. Watson: If we are arguing over numbers--

Mr. Breaugh: Do you want to be the government or not?

Mr. Watson: If we are arguing over numbers, I wonder why we have to because of the other little trick we have in there that requires that five members stand up. It seems to me that if you are doing that, the quorum you need in the present Legislature with the three parties is 15. Each party needs five.

Mr. Breaugh: Let me put it to you this way then. I would be happy saying we have to have five from each caucus. I want to point out that you're going to lose 10 to five every time we have a vote on that. If you stop to think about it for a moment, that's where the 20 comes from. If five people from my caucus and five from the Liberals can cause a vote to be recorded and happen at that time, I think you would want to have at least 10 members present.

The Vice-Chairman: No, because we can bring in other members.

Mr. Watson: We would bring in our other members.

The Vice-Chairman: The problem with five from each party is that we may have someday a fourth party with three members and then you have got a problem.

Mr. Breaugh: Yes.

The Vice-Chairman: Does anybody seriously want to change the number 20?

Mr. Lane: I think we had better change the bell.

The Vice-Chairman: We have a consensus on changing the bell. Does anybody seriously want to change the number 20?

Mr. J. M. Johnson: It's 20 in Ottawa. What is the rationale for 20 in Ottawa for over double the members? Why wouldn't 15 be a reasonable number here?

The Vice-Chairman: Smirle seemed to think it was in the British North America Act; I don't know.

Mr. Lane: I think Mike has a point though.

The Vice-Chairman: Is it a serious enough thing that we have to take any time to discuss it now?

Mr. J. M. Johnson: We would hardly ever have a quorum call with 15. It's usually around 17 or 18 members.

Mr. Lane: If we put it down to 15, it's going to be a problem.

Mr. MacQuarrie: I raised the question simply to find out whether there were any arguments for a lower number or a greater number or what the justification was for the 20.

Mr. Breaugh: I would think, in all seriousness, that the argument for a larger number would be coming from the government. Since you have more members, you would want to have a larger number present before votes could be taken and before business could be transacted. If you're asking me, I think 20 is a little on the arbitrary side. There are historical and legislative reasons for it. I don't think it's worth bothering with.

The Vice-Chairman: I think we see a reasonable consensus to leave the 20 alone. Let's proceed on to the next one.

Clerk of the Committee: Next is the simplification of parliamentary documents. Some of the matters they are proposing here we are already doing. After having seen most of the parliamentary documents like Order Papers and Notice Papers from right across the country, I think ours are probably in a better state than most, if not the best.

"While your committee recognizes the necessity of retaining the Order Paper in its present form, the fact remains it is confusing not only to the public, but to members of Parliament themselves. Your committee suggests the need for a simplified, unofficial daily agenda in addition to the Order Paper to indicate the likely order of business for any particular day. The proviso 'subject to change without notice' would be included on such a document. Your committee feels that members of Parliament and the public should be able to know what the agenda is likely to be without having to unravel the complexity of the Order Paper. Your committee realizes that the preparation of such an agenda would depend upon the better organization of the daily business of the House than is the case at present."

The Vice-Chairman: If I could interrupt, we have already done that, so I think we can just agree with that paragraph.

Clerk of the Committee: "Your committee has also received representations concerning the confusion which can arise during votes at the report stage and on the last allotted day of a supply period.

"Your committee therefore recommends that two particular parts of the Order Paper be examined with a view either to making changes to the Order Paper itself or to publishing a separate, unofficial document or documents. The first part relates to a changed organization of the report-stage motions subsequent to the Speaker's statement pursuant to standing order 75.(10). These motions could be shown as grouped for debate with explanations of the voting steps. The second part relates to supply motions to concur, restore or reinstate pursuant to standing order 58.(4)(a). These could be numbered for easier identification.

"Your committee recommends that the present Order Paper continue to be published and that it include an index.

"Your committee further recommends that the questions on the Order Paper should be published on a monthly basis in a separate document. Questions would appear on the Notice Paper once when notice is given, then be transferred to the appropriate section in

the daily Order Paper for the remainder of the month. At the beginning of each succeeding month all the outstanding questions would be printed in the separate document. During a month only new questions would appear on the Order Paper."

There was a motion in the House in this session dealing with questions and when they are to appear. They now appear only on Mondays; all the questions that are still unanswered. Other questions appear the week following their tabling.

Mr. Breaugh: I think the committee could consider looking at the practice of written questions. A little more pertinent, I think, is the nonpractice of printing the answers. You may or may not have tried to find the answer to a question that someone else asked. It's not quite as easy as one might think.

I would like to see the committee entertain a slightly larger concept here. For example, I would like to know a little bit about the expense of all of the written questions and all of the written answers. I would also like to discuss whether that is a useful practice to continue. Are there better options? There may be. Are there better formats? I have no problem with diddling around as we have done with how many times we print the same unanswered question. It seems to me we have found a pragmatic way to resolve some of the problem there.

I would like to know whether the members still feel that serves a useful purpose. Are they getting useful information or is the whole exercise a charade on all sides? If that is the case, perhaps the practice should be altered somewhat.

The Vice-Chairman: Again, written questions on the Order Paper are really an opposition situation. I don't think you would in any session, find any government members putting a written question on the Order Paper.

Mr. Breaugh: Yes.

The Vice-Chairman: There needs to be some revisions of that, either adding to or taking away from the rights or powers or privileges of the opposition members. Any review of that, again, like question period really, should be bubbling up from the opposition caucuses as to whether they like the situation or whether they feel there should be some change in format.

Mr. Breaugh: From my personal point of view, as one who has used the written question fairly extensively, I initially found that it was a useful practice. I would write out questions and the ministry would provide me with answers. My disappointment came about when I discovered that the written answers are vetted by the secretary of cabinet. That seems to somewhat destroy the answers I received.

It seems to me that now the practice is almost a game, who can put the most written questions on the Order Paper, on one side. On the other side of the House, the game is how long can we stall before we answer and can we vet this thing well enough so

there really isn't any information in the written answer and make sure that no one finds out what the written answer is.

Mr. Charlton: Except the guy who asked it.

Mr. Breaugh: It strikes me that we ought to take a look at that.

Clerk of the Committee: The answers to the questions, if they're short answers or not too long, are printed in Hansard every Friday. The long answers or answers which have tables and which can't be printed in Hansard, are made sessional papers and are available upon request.

Mr. Breaugh: Yes, but it isn't easy to get them. You have to wait until they are made into a sessional paper. I'm not sure of the value of printing in Hansard that we can't answer this question or the answer is not yet prepared. I think we ought to take a look at this practice and all of the aspects of it and make some fundamental decisions about whether it is a useful practice which serves a useful purpose. If it does, then I think we have an obligation to see that we clean up our act around the publication of the answers.

Mr. Charlton: I think it would be useful to sit down and bring it up to date to try to resolve it. We should sit down and have a serious look at it.

I only put one question on the Order Paper last year. It was a question of the Minister of Energy. I got an interim answer after two weeks. This was in the spring last year. It said, "It's going to take us until October to get you your answer." It was a fairly extensive question, so I accepted that. In October I got my answer saying, "We can't answer this question."

The Vice-Chairman: Again, as far as the government is concerned, this whole thing is a pain in the butt. It makes a lot of work for a lot of research people in a ministry to answer a question that someone may put on, for whatever reason. When the answer is written, the political reason for the question may no longer be valid.

Mr. Breaugh: On balance, I would prefer to have a researcher working for me who goes around and digs through government documents and comes up with that answer. At least I have some control over the kind of research that is done. If I am not happy with the researcher's work, I can put a little pressure on him or her to come up with the answers.

The current system, from my point of view, is not particularly useful any more. It was at one time for a brief period. I rather suspect that you could provide each of the opposition members, at least, and probably all of the government members who wanted them with a flock of researchers for the kind of money you're putting out preparing these current nonanswers.

The Vice-Chairman: I would think the cost of 100 more researchers for members would be more.

11:50 a.m.

Mr. Watson: What is the value of the written question? If you want the answer to something, is it not more effective to write to the minister, and then, if he does not respond, stand up in the House and say, "I wrote the minister and he hasn't answered this"?

Mr. Breaugh: In all fairness, when we began this practice of written questions, I used them fairly extensively. In the first year or so, I got back answers from the ministries. They told me what I wanted to know. In other words, the minister or someone on his staff picked up the questions on the Order Paper and turned them over to other people, and they actually went out and dug up the information I did not have the time or the resources to get.

So, in the first year or two, it worked fairly well. Then we began to make use of the information that was provided, and at that point, someone decided these things had to be vetted by the secretary of the cabinet. From that point on, I have been getting no information. Often, when I ask a written question, I get lots of paper, but any pertinent information that happened to be on that paper was carefully vetted out.

What I am getting back now is the prepared political answer. In that case, I might just as well have written to the minister, who would have sent me a nice letter back saying: "Thanks a lot, Mike. Kiss off."

The Vice-Chairman: You must admit the questions are becoming prepared political questions, rather than just requests for information. So there are both sides to that coin.

Mr. Breaugh: Yes, but the Order Paper is full of written questions right now.

The Vice-Chairman: Far more than there ever used to be, yes.

Mr. Breaugh: Yes, they are political in nature, but this is a political process. We should never back away from that.

They also ask for information. If the purpose of the exercise is to get information, there may be far more cost-effective ways to do that than this process.

The Vice-Chairman: There seems to be a consensus that the written question situation should be looked at. I think we can do that when we are going back--

Mr. Charlton: There is one point I would like to make that people can think about in the meantime. Mr. Chairman, you mentioned there are a lot more questions on the Order Paper than there have ever been before. The basic reason for that is that both the Liberal research and our own research take all of those things which, because of staffing problems, they do not have time

to look at, and bang them out through a member's office on the Order Paper.

The costs involved in dealing with all of those questions are something we have to look at realistically, in terms of other things we have discussed in the past.

Mr. Edighoffer: This probably stems back to the private members' business. We had a bill of Mr. Breithaupt, a freedom of information bill. Had that passed, we probably would not have to dig out all this information.

The Vice-Chairman: It seems there are some alternatives or possible tradeoffs. As I said before, however, I think it should be on our discussion when we get to it.

Interjections.

The Vice-Chairman: I would suggest the opposition members of this committee, with their caucuses, do a little homework on this before we come to it in our review of standing orders. It is basically an opposition prerogative. If we are going to take away or give up any opposition prerogatives, I think the impetus for it has to come from the opposition, with possible suggested alternatives.

Members of the committee, we have one other little thing here, which I hope members have. It is another report on the Speaker. Have you all got copies of this?

Clerk of the Committee: It is distributed. It is just a four-page report.

The Vice-Chairman: Do do you want to take the time now to finish this? Let us take the time to read this through quickly. Do you have some extra copies?

Clerk of the Committee: We have a couple.

This is from the fourth report of the Ottawa committee, dated Friday, December 3, 1982. Starting at paragraph 2:

"Your committee is of the opinion that the House should exercise a more direct control over the nomination of candidates for the speakership. It would be difficult to exaggerate the importance of the office. The Speaker is the presiding officer of the House of Commons, the guardian of its privileges and the protector of the rights of all members. He or she is the principal officer of the House and the head of its administration. In relation to the House of Commons, the Speaker fulfils a role similar to that of a minister in relation to a government department. The Speaker is the representative of the House of Commons and the embodiment of its prestige and authority. He or she receives visiting dignitaries and sometimes heads parliamentary delegations visiting other countries.

"As presiding officer the Speaker regulates debate in accordance with the rules and practice of the House, decides

points of order and interprets the rules and practice when necessary, ensures that the proceedings of the House are conducted with fairness and impartiality, and protects the freedom of speech of all members and of all parties represented in the House. The Speaker's role is to some extent akin to that of a judge and the office is an essential feature of our parliamentary system.

"The Speaker belongs to the House, not to the government or the opposition. Although the servant of the House, the Speaker is expected to show leadership in promoting and safeguarding the interests of the House and its members. Decisions of the chair may not be appealed except by way of a substantive motion. The Speaker thus enjoys the full trust and confidence of the House without which no incumbent would be able to discharge the onerous duties. Thanks to the successive Speakers who have occupied the chair of the House of Commons, the Canadian speakership has developed a tradition of impartiality and devotion to duty of which we can all be proud.

"Although the Speaker once elected has always become the true representative of the House of Commons, the Prime Minister under our practice has always exercised a very strong influence over the initial choice of candidate. For many years discussion has taken place on the desirability of introducing the continuity principle as the basis of the Speaker's tenure of office. A recurrent proposition has been the establishment of a special seat for the Speaker to be designated Parliament Hill, the electorate being the members of the House of Commons. A private members' bill embodying this proposition was debated in the House on October 29, 1971.

"Certain other initiatives have been taken in the past which have had as their object the promotion of the independence of the chair. In 1957, when Mr. Diefenbaker was first elected as the head of a minority government, he asked Mr. Stanley Knowles whether he would be prepared to accept nomination as Speaker. Mr. Knowles declined, but the approach indicated that the government of the day was prepared to support an opposition member for the speakership.

"In 1968 Mr. Speaker Lamoureux resigned from the Liberal Party and successfully sought re-election as an independent. He ran again as an independent in 1972 and altogether served three terms of office as Speaker. He was succeeded by Mr. Speaker Jerome in 1974 who, in 1979, became the first Speaker to be continued in office following a change of government after a general election. This sequence of events provides some evidence of a desire to remove the nomination of the Speaker from the exclusive control of the Prime Minister of the day.

"Your committee recognizes that the Speaker must continue to be elected at the beginning of a new Parliament, as required by the Constitution.

"Your committee recognizes also that the House must respect the linguistic traditions governing the selection of Canadian Speakers.

"The committee nevertheless recommends that, without violating these essential principles, the method of nomination and election should be changed. It is proposed that the Speaker should cease to be nominated by the Prime Minister and that he or she should be elected by secret ballot. When the election of the Speaker takes place the chair would be taken by the retiring Speaker or by the senior private member present, depending on the circumstances. In order to be elected, a candidate would require a majority of at least 50 per cent of the votes cast plus one, the process of balloting to continue until one candidate emerges with a clear majority. The ballot papers would be counted by the Clerk of the House in the presence of one member of each recognized political party whom the member presiding would appoint as scrutineers.

"The member presiding would be entitled to vote in the election but would have no casting vote in the event of a tie between two candidates. The member presiding would announce the result of each ballot until a candidate finally emerges with an overall majority. After the first ballot only, those members for whom votes were cast, with the exception of the member receiving the fewest votes, would be eligible as candidates.

"Your committee therefore recommends the adoption of the following new standing order:

"1A.(1) Where the members are ready to proceed to the election of a Speaker at the opening of a new Parliament, or in the event of a vacancy in the office of the Speaker, or in the absence of a Speaker who has announced his or her intention to vacate the office of Speaker, the senior private member present shall take the chair and preside over the election. Where the Speaker has notified the House while it is sitting of his or her intention to vacate the office, the Speaker shall preside over the election of a successor.

"(2) Subject to section (4) of this standing order, the member presiding shall be vested with all the powers of the chair.

"(3) The election of the Speaker shall be conducted by secret ballot. Ballot papers shall be distributed to each member present in the chamber prior to the election. Each member shall print on the ballot paper the name of the member of his or her choice for Speaker. The ballot papers shall be collected and counted by the Clerk of the House in the presence of one member of each recognized political party whom the member presiding shall appoint as scrutineers.

"The name of each candidate and the number of votes cast on behalf of each candidate shall be announced to the House by the member presiding and if any candidate receives a majority of the votes cast, he or she shall be declared elected. If no candidate receives a majority, the candidate receiving the least number of votes shall be eliminated and the process of balloting for the remaining candidates shall continue until one emerges with a majority. In the event of a tie vote at any stage of the election a further vote shall be taken. The name of the candidate who is

declared elected shall be announced to the House by the member presiding.

"(4) The member presiding shall be entitled to vote in the election of the Speaker but shall have no casting vote in the event of a tie between two candidates.

"(5) For the purpose of this standing order, the 'senior private member present' means the member present who, being neither the Leader of the Opposition nor the leader of a recognized political party, has the longest unbroken period of service as indicated in the Canada Gazette."

12 noon

The Vice-Chairman: We have discussed the election of Speakers from time to time in this House. One other point to come out in this, just peripherally, is that in the House of Commons in Ottawa, an appeal to the Speaker's ruling is a standard motion. In our Legislature, anyone can just stand up and appeal the Speaker's ruling.

Mr. Breaugh: That is a matter which we have kicked around for some time and I would like to see some resolution to it. There remain some problems around the office of Speaker of the House in Ontario. Whether we adopt this process or something similar to it, I think it is time to put that one to rest.

I am an advocate of the Speaker being as formally not part of anybody's political party as we can make him. I really think that is important. Once we do that, I am prepared to go to systems that do not allow you to challenge the Speaker's ruling, and all that kind of stuff.

There is a moment of awkwardness whenever a Speaker's ruling is challenged here and I would like to get around it. It generally tends to be when the Speaker is seen by one of the opposition parties--he does not have to necessarily be doing this, just be seen to be doing it--to have changed from being someone who has the confidence of every single member of the House, or the majority of members in all parties, into someone on the government's side of an issue.

I do not like it when I perceive that to be happening and I also do not like the mechanisms that are at my disposal to challenge that. I would prefer not to do that. I would prefer to get that neutrality firmly established initially. I do not suggest we will resolve it this morning. That is a matter which a number of us are concerned about in all parties, including the current Speaker. I would like to see us deal with that matter of how the Speaker is chosen and for how long.

Perhaps I am not in a majority here, but I believe that the only way to get that neutrality is to establish a seat called Queen's Park, hold an election and proceed on that basis. In other jurisdictions, I have seen various attempts to try to establish the independence of the Speaker by running him as an independent candidate or by having a kind of gentlemen's agreement that the

opposition parties or other parties will not oppose him in a general election. It seems to me that they do not work particularly well.

At any rate, I would appreciate if we could spend some time on that matter because I think it is something that ought to be resolved.

The Vice-Chairman: I would point out two things. First, there is nothing in the standing orders about electing the Speaker; it is in the act. It simply says the assembly, at its first meeting after general election, shall proceed to elect one of its members to be Speaker and one of its members to be Deputy Speaker.

As a comment on what Mr. Breaugh said about Queen's Park, what you are doing is setting up the Speaker to be almost a nonpolitician, almost a civil servant of the House. I will compare that, but only partially, with the chairman of Metropolitan Toronto, who is not an elected member, but who was chosen by the council from a nonpolitical base.

There has been a lot of criticism by a number of different parties about that method of selection. A Speaker is a somewhat different kind of animal than a chairman of a metro council. What you are really proposing is making the Speaker no longer a member of Parliament.

Mr. Breaugh: The awkwardness I am trying to get around--I watched Mr. Speaker turn around a television broadcast from a Peterborough station.

For about the first half of the broadcast, the interviewer--that is the difficulty; the onus is on the person doing the interview--was talking about procedural matters and things of general nature that allowed Mr. Speaker to be Mr. Speaker. He handled that part very nicely. In the second half of the interview, the fellow who was hosting the show wanted to talk to the local Tory member, who happened to be Mr. Speaker, John Turner. Mr. Speaker had to respond as the local member of a constituency who belongs to a political party.

It becomes very awkward for me, as an opposition party member. I do not have the opportunity to change gears. It seems to me it puts the Speaker in a very awkward position. As an opposition member who is a supporter of the current Speaker, it puts me in an awkward position too.

I think that at some point we have to deal with that conflict. The conflict is there for every Speaker we have ever had. So long as he continues to belong to a political party and represent a constituency, there are demands put on him or her to represent it in a way in which he or she was elected. That is the awkwardness.

I would prefer to see it dealt with in this manner, rather than by some great controversy that erupts over whether Mr. Turner has presented a cheque on behalf of the government of Ontario to

some firm in the riding of Peterborough, or whether he shifted from talking about procedural matters into his opinion on how good a job the government is doing.

I think we create a problem for the Speaker when we retain the present system, and I think that is going to continue to be a rather serious difficulty for both the Speaker and for members of the Legislature until we resolve it.

Mr. Lane: Mr. Chairman, I can't quite agree with what Mike is saying there because it seems to me, regardless of whether the Premier or the Prime Minister has any great opportunity to have his way, that person is always going to have a riding. The television thing you talk about, if the person who is interviewing you wants to zero in and talk about riding problems, and so forth, he is still going to be a member of that party, regardless of how he is elected.

Mr. Breaugh: The reason that I am an advocate of creating a special constituency for the Speaker is that I think the Speaker must be taken out of (a) the obligation to represent a political party and (b) the obligation to represent a constituency that is outside of the Legislature. As long as we continue that practice, we have created a problem for the Speaker and for opposition members.

It is almost akin to the notion that most of the time I am neutral, but once a day or two or three times a year I have to go back home and become very partisan. You can't do that; you can't change gears like that. Everybody has tried, but no one has succeeded.

Mr. MacQuarrie: Let's look at your suggestion of creating a constituency of Queen's Park. Who are the constituents?

Mr. Breaugh: Us, the members.

Mr. MacQuarrie: He has to represent someone, presumably.

Mr. Breaugh: The members here are his constituents.

Mr. Charlton: Because the members come from all three parties, that is who he is representing.

Mr. MacQuarrie: Who will be the voters duly registered in this riding?

Mr. Breaugh: The members of the Legislature.

Mr. MacQuarrie: And the Speaker and his family?

Mr. Breaugh: No, the members of the Legislature.

The Vice-Chairman: Just to be the devil's advocate on that, if we did that sort of thing, given the present makeup of the House and the fact that, with a few exceptions, you have a majority government, no matter how you slice it, it is still going

to be that person, the member for Queen's Park, who is going to be selected by the members of the majority in the House.

Mr. Breaugh: I am not even trying to avoid that.

The Vice-Chairman: Whereas you now accuse the incumbent Speaker from time to time as being partisan, because he owes something to his electorate back in whatever riding, I can see the accusations under your scheme where the Speaker is going to be accused of being the handpicked tool of the government, or all the phrases that opposition members can use every time they disagree with the Speaker's motion, because he is, in effect, going to be selected, even in your system, by the Premier, because the Premier is going to select him through the caucus as the guy whom we are going to vote for Speaker next Tuesday afternoon. It is still going to be a partisan person.

Mr. Breaugh: Some of what you said is true.

The Vice-Chairman: Because you are selecting a person only for a term. You are not appointing a judge of the Supreme Court or a lifetime situation, and so on. I am just throwing this out to give you the other side of the coin to think about, that, whereas from far away that system looks great, it has many political disadvantages, and maybe as many as the present system.

Mr. Charlton: There is one major advantage to the secret ballot, the Premier won't know who from his caucus didn't vote for the guy he picked.

The Vice-Chairman: Mr. Speaker has eyes in the back of his head.

Mr. Breaugh: The thing I am trying to acknowledge and which you cannot get away from is that, however it is done, whether you create a special constituency or whether you do not, whether you leave that part of it as is, the votes for the Speaker are always going to reflect the votes and the partisan nature of the Legislature. I don't see anything wrong with that and I'm not trying to avoid that; I am trying very much to accept that.

All I am saying is that the process, I think, should be done somewhat differently, that you would resolve some problems for the person who occupies the chair, if you said, "Your obligations are to the the Legislature of Ontario and no other." I think that you could do that, whatever the mechanism might be and whatever the process might be.

I do think there is a problem that every Speaker we have ever had has had to face, and that is that he sits here in Queen's Park and he is expected to be neutral and everybody is expected to deal with him as a person who is not involved in partisan politics. However, the moment he goes back home, he must then become the local member for wherever, and that means being partisan. That conflict has caused every Speaker I have ever seen here some problems, some to a greater degree than others, and I think we should attempt to resolve that.

Mr. MacQuarrie: What if he followed the policy established by Lamoureux, that he severed his connections with the existing party structure, identified himself as an independent and sought re-election on that basis?

Mr. Breaugh: That has been tried, with not a great deal of success. I think Mr. Speaker Thomas in Westminster tried that. The existing political influences at Westminster agreed that was a good idea and a gentleman's agreement was struck.

The problem was the rest of the world was not part of that gentleman's agreement and didn't care to follow it. I think he has been challenged by independents and fringe candidates and things of that nature. I think they are reviewing that process. I am not sure--

Clerk of the Committee: He is seeking re-election as, "Mr. Speaker seeking re-election."

Mr. Breaugh: Yes.

Clerk of the Committee: I think there is an agreement among the major parties not to contest the election.

Mr. Breaugh: Not to challenge it.

Clerk of the Committee: As you say, there is no guarantee. There is no restriction on any other individual or party.

The Vice-Chairman: Then if Mr. Speaker runs for re-election as Mr. Speaker and gets elected, but the party he came from originally did not get re-elected, a new party might come in and the new Legislature may not choose Mr. Speaker to be Mr. Speaker continuing. Then where does he go? He goes back to his party again after being elected as an independent.

Mr. Breaugh: To be fair to whoever is chosen as the Speaker, I think you have to provide a clear picture. My version of this is to have two terms and have your election in mid-term so you have the continuity when a new Parliament convenes. What you are really saying to somebody is that for a period of about eight years, you will have the job as Speaker of the Ontario Legislature; that is the constituency you represent.

All you are really doing for that person is laying out the rules that will be followed so he recognizes that under most circumstances, if he is chosen Speaker of the Legislature, he will be around here for eight years and, at the end of that time, someone else will take it over.

So you are probably talking about either someone who is prepared to accept that or someone who is near the end of his term as a member of the Legislature, and is prepared to say, "For the last eight years I would love to be Speaker." On the other hand, if you went to some young person and said, "Your life in the Legislature is only going to be eight years long no matter what you do," he might say, "Wait a minute, I might want to stick

around a little bit longer." So there are problems with it.

The Vice-Chairman: Mr. Breaugh, particularly, has brought up some points. There is nothing about the Speaker in our present standing orders. When we get to a detailed review, because it has been raised seriously by one party here, we have to give some consideration to whether or not we want to change the method of electing a Speaker.

That concludes this review. Is there any other business before the committee? We will be meeting next week only if the Ottawa people are coming down. The meeting is adjourned.

The committee adjourned at 12:13 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS
REVIEW OF HOUSE OF COMMONS COMMITTEE REPORT
THURSDAY, FEBRUARY 10, 1983



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)
Breaugh, M. J. (Oshawa NDP)
Charlton, B. A. (Hamilton Mountain NDP)
Edighoffer, H. A. (Perth L)
Epp, H. A. (Waterloo North L)
Johnson, J. M. (Wellington-Dufferin-Feel PC)
Lane, J. G. (Algoma-Manitoulin PC)
MacQuarrie, R. W. (Carleton East PC)
Mancini, R. (Essex South L)
Treleaven, R. L. (Oxford PC)
Watson, A. N. (Chatham-Kent PC)

Substitution:

Robinson, A. M. (Scarborough-Ellesmere PC) for Mr. Treleaven

Clerk: Forsyth, S.

Staff: Eichmanis, J., Researcher

Witnesses:

From the Special Committee on Standing Orders and Procedure (House of Commons, Ottawa):

Baker, Hon. W. D., Vice-Chairman; Member of Parliament
Blaikie, Rev. W. A., Member; Member of Parliament
Smith, D. P., Member; Member of Parliament

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, February 10, 1983

The committee met at 10:09 a.m. in room 228.

REVIEW OF HOUSE OF COMMONS COMMITTEE REPORT
(continued)

Mr. Chairman: Gentlemen, I see a quorum. We have the privilege and pleasure of welcoming three members of the House of Commons who know something about standing orders and procedures. They are the Honourable Walter Baker, David Smith and Bill Blaikie. I assume that they all represent one of the legitimate parties in the House of Commons.

Probably I could start off by asking Walter Baker generally how this committee he sits on happened to get around to dealing with the standing orders and procedures in the House. We know that you had a bell-ringing session a few months ago and that probably might have been the catalyst.

Mr. Epp: Was that before our bell-ringing session or after?

Mr. Chairman: That was before. That is where you guys got the idea.

I think you were on a TV program called Question Period, Walter. In reply to one of the questions, you used the phrase, talking about rules reform, "There is a recognition among all of us, regardless of what our party is, that the place is sick and it had to be fixed up."

I would assume from there it started to roll and the particular committee, the standing orders and procedure committee, got together and decided to reform some of the rules of the House. Is this basically the background?

Hon. Mr. Baker: Yes, I think so. If I may say so, I submit that the bells incident wasn't the reason for what subsequently occurred; it was perhaps a catalyst to what occurred. It raised the issue of Parliament in the public perspective to a great degree. It also, I think, made thoughtful members of Parliament consider the position.

I believe that the present government House leader has been quite up front about the requirements of reform for Parliament. In fact, when he took office for the first time as government House leader, the day after he was sworn in, he made a statement on parliamentary reform. I would suspect--and David can either confirm or deny it--that he had some difficulty with the government, not that they weren't interested in it, but there were other more pressing problems facing the government in terms of the economy that had something to do with the ultimate decision.

I think there are a couple of things you should know about the committee. Number one, it is not a standing committee. I have no disrespect for standing committees--I am on the standing committee on procedure as well--but it is a task force, a special committee. It grew out of the experience that we were having.

It came out of the very successful task force experience that we had had heretofore on such committees, chaired by David Smith, on the disabled, a committee on alternate energy, a committee on various things upon which the government had not taken a fixed position, so there were no sides on the issue. As a result of that, the interest in the subject matter, the interest of the members wanting to do something, and perceiving that something had to be done, the task force experience has been quite good. That is the first thing.

The second thing is that the committee has been described as a blue-ribbon committee. That is a description somebody else uses but we haven't. It has been described that way. There are eight former ministers on that committee from both sides of the House. The chairman, Tom Lefebvre, was the chairman of a very successful task force and enjoyed the experience and saw its worth. David is a parliamentary secretary to the president of the Privy Council; there is a former parliamentary secretary to the president of the Privy Council, the House leader of the New Democratic Party was on it; I am a former House leader; and it goes on, with ministers on it who had some interest in it.

That kind of atmosphere was around the place, as well as a realization that something had to be done and an understanding on the committee that there are two sides to the question. The first side is that the government in our system, for whatever reason--we can discuss the reasons if they are pertinent--has found its legislative time diminishing in terms of output. That can't exist without addressing it. Governments are elected, regardless of their stripe, to do certain things and they have to have an opportunity.

On the other hand, there was a recognition, balancing that, in the committee itself, that Parliament's opportunities to hold governments responsible and really examine what government was doing were also diminishing and thoughtful members were worried about that aspect of it, this whole balance; the system was out of balance. That is why I used the word "sick" that day, and I think that is not overstating it. I believe that the recognition of the necessity of something to be done is the fact that that committee report of ours, the third report, was accepted without so much as the change of a comma by the House in a very short debate.

Mr. Chairman: What surprised members of this committee was how quickly you seemed to get consent from the House and the fact that you have implemented a number of changes on a trial basis this session.

Hon. Mr. Baker: For a year.

Mr. Chairman: For this session, yes.

Hon. Mr. Baker: All of us on the committee hope that the trial will continue. In order to assure that what we are doing as a committee is we have broken off one subcommittee. Bill Blaikie and I are on one subcommittee with the Honourable John Reid of the Liberal Party working on some things that we can do quickly which people can agree on while that mood is there to catch it to do other things. The committee itself is plugging away at accountability.

I have to say that the goodwill of this special group of members towards each other is extremely important. The ability to recognize the problems that different parties have in different positions in the House of Commons is extremely important. We haven't had one division that I'm aware of. We haven't had a vote on one issue in the committee. The recognition of the different disciplines that affect a government party, an official opposition and a third party in the chamber is quite remarkable.

I think we all recognized that something had to be done. That goes beyond the 20 members on the committee. I suppose I can leave the way open there for my friends.

Rev. Blaikie: Just on that comment of why the success of the third report of the committee, I think one of the other things that was a factor in that was that we presented the report as a package and made it quite clear that we didn't want anybody tinkering with it, that it was the result of compromises reached within the committee and that it was really an all-or-nothing package. We didn't want the government selecting from it what it liked and leaving out what it didn't like, or we didn't want the opposition parties to take that attitude either.

It was also seen to be just a preliminary report in the sense that this was the easy stuff. I think the committee managed to get out the view that if the House wasn't going to move on the easy stuff, there was no sense working on the hard stuff. We might as well disband the committee. There was a sense that if the House didn't move on that interim report, there was going to be little point in carrying on. I think that was also a factor in its quick acceptance.

Mr. Chairman: Mr. Blaikie, did you involve the House leaders? Did you take it to your individual caucuses and just tell them what was going to happen to get some consensus from your own members and then reflect that in your report in some way?

Rev. Blaikie: The committee decided after some discussion not to go to our respective caucuses before we tabled the report. This was done before my time, in 1976, I believe, and that was the end of it. When the caucuses got hold of it, things ground to a halt.

It was decided this time that we would table the report. The recommendations would be the recommendations of the committee and then we would each take responsibility, those of us on the committee, for persuading our respective caucuses of the wisdom of

adopting this report. We would at least have publicly made these recommendations, so that there would be a political price to pay for those caucuses who opposed the recommendations. If you did it before the recommendations, it would all be behind closed doors and there would be no political price. It is a strategy that seems to have worked.

Mr. Epp: Was there constant consultation with the House leaders, or are you saying there really wasn't any?

Rev. Blaikie: No, none.

Mr. Epp: It was pretty well in camera and that was it?

Rev. Blaikie: Yes.

Hon. Mr. Baker: David, I'm sorry, I don't want to interrupt if you would like to comment about this.

Mr. Smith: Mr. Chairman, I am not sure how you want to structure this. I had thought that if you want at some point to get into a summary of the areas that we dealt with that rather than have all three of us rambling all over the place, I might talk about the changes we made to the timetable, Walter might talk about the changes we made to the committee system and Bill might talk about the whole question of members' statements and questions in the House, if you want to do that at some point.

In terms of an introduction to the whole issue, right at the outset it was decided that we wanted to try to have good chemistry on this. That had something to do with the selection of the chairman, Tom Lefebvre. Anyone who knows him knows that you would really have to work at ever having a fight with him. Even if you worked at it, I don't know that you could, because he is so easy-going. Quite frankly, he never at any point tried to steer the committee in any direction. What he did was preside over a happy atmosphere. That's what he did, and it worked.

The other thing was that the government House leader, of course, by virtue of his duties in the House, and the opposition House leader, by virtue of his duties in the House and perhaps his personality a bit, sometimes have a little friction in the House. I think it was felt better if they were not on there. Our House leader made the offer to Mr. Neilsen that he wouldn't go on it if Mr. Neilsen wouldn't go on it. Mr. Neilsen accepted that and Mr. Baker, to the extent that there was a senior Tory on there, was it.

10:20 a.m.

I am the assistant House leader, so Mr. Pinard had some idea of what was going on, but it wasn't a question of orders or that sort of thing. By and large, the government decided that they would wait and see what package developed.

I think it's fair to say that most members approached it as parliamentarians rather than with the attitude of being an opposition member or a government member. Maybe at the first couple of meetings some people had that in their minds a little bit more, but that gradually broke down.

Perhaps some of the Tory members thought that in a couple of years the roles might be reversed and that may well have influenced their thinking, but that's not a bad thing.

Mr. MacQuarrie: I think it would be a good thing.

Interjections.

Mr. Smith: Another thing we decided to do was to get out of Parliament Hill on a couple of occasions and go to Meach Lake. We went to Mont Ste-Marie, which is a conference centre about 25 miles from Ottawa, for three days at a whack. Some members were reluctant to do this, but I am chairman of another committee that has done this and it always worked well in building consensus. When you would be there you would be away from the phone calls, you would be away from question period. You would all be paired. You would have breakfast, lunch and dinner together and develop sort of a camaraderie and a bit of a team spirit. I think all that played an important role in developing consensus.

Those are a few introductory remarks, and if at some point you want a quick summary of what's in it, we can break that down.

Rev. Blaikie: You have studied our report, have you not?

Mr. Chairman: Yes, we have a copy of the report and we have spent two meetings on it.

Hon. Mr. Baker: If I may, on the business of consultation, Bill indicated exactly correctly the attitude that we took towards our caucus groups, that we would not be surrogates but that each one of us has a particular problem. We were not going to be surrogates for our House leaders or our groups within the caucus.

On the other hand, I had a problem which I handled in this way. Although our party is the party of reform and we have talked about it for years, I suppose, because we have been in opposition for a fair period of time, I determined that for the purposes of Her Majesty's loyal opposition it would be necessary to engage the attention, or at least give the opportunity to members to have their attention engaged, in a rather unique way. When there was a particularly good witness or a good paper, and we had many of them filed with us, I made sure that every member of our caucus had it.

I also had a meeting; if any member was interested, he could come. Very few came to these meetings where I would discuss the progress of the committee in what I like to call nondefinitive terms. I would never discuss an agreement that we had made, but they knew the general direction in which we were going. If they had a cautionary word, I would at least have the caution in my mind, but not to the extent of ever disclosing before the committee what a report was, what was finally involved in it, so that no member of the party could say that this was all done behind their backs. It wasn't. It was a way in which I could

honour the obligations of the committee, but deal with something that I knew would come up in the event that they were presented with a fait accompli that might contain some things that were revolutionary from our point of view.

That's the kind of thing I had to do. We had, ultimately, a special caucus to deal with it. It went through, not without some difficulty, I confess. We had a long and difficult debate.

Mr. Chairman: At nine o'clock on a Monday morning?

Hon. Mr. Baker: We had a dinner meeting, which went from 6 p.m. until midnight. The dinner was very sparse, and I do not know if it was helped along by wine or what, but consensus was reached.

Mr. Smith: We did it in our regular caucus. Wednesdays in Ottawa, at least if you are a Toronto Liberal member, remind me of Sunday when I was growing up. My father was a minister, and my grandfather was a minister. I always went to Sunday school, church, young people's evening service, the whole bit. We start off with the Toronto caucus, the Ontario caucus, the national caucus, and it is really like Sunday in the old days.

We decided, however, that we wanted as many members there as possible, so we did it in the regular caucus. I got up and did a summary of it, with charts and everything like that, and then we answered questions. We did it in one hour, and a few people had reservations but, ahead of time, the Liberal members on the committee had developed a strategy that they would really talk it up, and it worked.

Mr. Chairman: Did you have outside witnesses to present briefs of any kind? If so, how valuable did you find those?

Hon. Mr. Baker: We did. The answer to your question is yes, we had a large number. I think they were valuable, at least in defining the issues for us, and opening up other directions and new directions for thinking about some of the issues.

We did not follow anyone's thesis slavishly by any means, but it was a mind-expanding experience. We had some very interesting witnesses.

I think David has mentioned the process of coming together and discussing, from the point of view of a mutual interest in reform, albeit with different parties, in focusing on things. It helped to bring us together as a committee. I think it was quite important. It helped us understand one another in the course of things. It helped us develop a trust, Liberals to Conservatives to New Democrats, that the party interest was being submerged to a great degree and Parliament's interest was being examined. I think it was helpful in those areas.

Rev. Blaikie: I think it was Robbie Burns who said that it is helpful to have the gift to see ourselves as others see us.

What we had through the witnesses sometimes was some very devastating criticism of the way Parliament operates, the way a committee operates.

Although all members had this sort of vague sense that something was wrong, I think it was not always very articulate. What the witnesses helped the committee to do was to articulate for themselves just what was wrong, and to begin to think more clearly about some of the problems. It also helps to create some public interest, because the media attend and they report what the witnesses say, and it creates some momentum.

Mr. Chairman: Did the committee travel around a bit and advertise and that sort of thing?

Hon. Mr. Baker: Advertised.

Mr. Chairman: You did.

Mr. Smith: We have travelled since that report. We went to London, England, for 10 days.

Mr. Chairman: Hey, did you hear that, fellows?

Mr. Smith: We were all equally paired.

This, however, really has to do more with the next phase, because we are getting into new territory. We may do a little stint in Washington, not the whole committee I think, but some members might be going down there too.

Interjection.

Rev. Blaikie: We held all our hearings in Ottawa. We did not travel.

Mr. Smith: Yes, we did not travel for hearings.

Mr. Chairman: Do you have any questions, gentlemen?

Mr. Breagh: Yes, I have a couple.

We have gone through this process here. Like you, we have not done a bad job inside this committee of setting aside differences from the caucuses and perspectives and things like that. We have done the studying of rules and listened to witnesses and visited other jurisdictions and put together reports.

Where we are badly stalled is that we cannot seem to get anything to happen with it. It is not just the government that is stalling on it either. I suppose you could make the old claim it is government's initiative to make these changes and to call these things. There seems, however, to be a lot of vested interest that we are running up against and we cannot seem to break that.

What did you do that we could do that would break that?

Mr. Smith: I think the key was that we did not make any immediate permanent changes. What we did was to recommend a trial period that automatically expires at the end of a year, so that people are not carving anything in granite for time in eternity. I think part of the reason we were able to sell it was that it was done on an experimental trial period, as a package.

10:30 a.m.

Mr. Breaugh: David, maybe you would be a good one to try this on for size. What is in this package that is attractive from the government side of the House?

Mr. Smith: I shall just talk a bit about timetable and some of the things we did there.

One of the problems we have on timetable is the legislative flow; how do you move bills along at a reasonable rate? One of the sort of things the government has always had is that we do not have an automatic adjournment for, say the Christmas recess and the summer recess.

A government would never say, "We'll adjourn on such and such a date," because the opposition can just dig in their heels and they know they are going to go home on that day. Traditionally what governments would do is they would have the House leader meetings--I go to all those--and you would give the opposition a list, and say, "We are going to adjourn for Christmas when we have concluded these bills."

What we sort of worked out was that the government surrendered that and moved to a yearly calendar, but in return for that we got shorter time limits on speeches. Whether or not it will work out on balance as a good thing we do not really know.

The time limit, however, on your basic speech--there are exceptions to this and I will not get into those--is from 40 minutes down to 20 minutes, with 10 minutes of questions afterwards; and Bill Blaikie may want to talk about that, because that is one of his pet projects. It is 40 minutes down to 20 minutes, however.

If you look at the time spent in the House on government bills, 60 per cent of it is spent on second reading debates. That is where the big backlog is, and that is really a perversion of what a second reading debate is to be all about. I do not need to tell you what a second reading debate is all about.

In the British House they have a system whereby they have one day of debates on second reading, with no automatic hour of adjournment, and they will often go until three or four o'clock in the morning. We could not sell that to our group, but what we did do is to agree that after eight hours of debate you then have a 10-minute time limit on speeches on second reading, with no questions or anything. We shall be reaching that very shortly on the amendments to the Income Tax Act. I think that what that does is to deny to the opposition the ability to have an unreasonable

filibuster on a second-reading debate that will go on ad infinitum.

So the government gave up the formula of saying, "Well, you don't go home for Christmas till the following bills are done," but in return for that they got this schedule of shorter speeches. Whether it will work I do not know, but we seem to think it was a reasonable balance.

Hon. Mr. Baker: The government is not without remedy on this. They have allocation of time which is being used quite a bit now, in fact to the point where it is becoming respectable.

I confess here that I rarely now enter into allocation-of-time debates, because one of the classic definitions of the difference between allocation of time and closure, in the classic sense, is my definition. Every time I enter into the debate, they quote this back to me, because I was once a government House leader.

Mr. Smith: I give that speech almost daily.

Interjections.

Hon. Mr. Baker: He has. So I decided to stay out of it, because if I were government House leader again I would want that power to use it. That power is there, and it is unfettered.

Mr. Rotenberg: Would you define allocation of time for us, your definition of how it works?

Hon. Mr. Baker: We have a system when the House leaders will sit down, at any stage of a bill, to see whether or not there could be some agreement as to how long it will take to complete the next proceeding stage. Invariably there is no agreement, although there are provisions in that rule for agreement.

Mr. Smith: It has never happened, not once.

Hon. Mr. Baker: So, having so consulted, a minister can stand and move a motion to allocate a day, or two days, or whatever time, to the next series of proceedings, report stage or third reading--

Mr. Smith: A minimum of a day.

Hon. Mr. Baker: It must be a minimum of a day. It has happened quite often, to the extent that now in our House it is really quite a respectable procedure, which I must say to you I think is not a bad thing.

Interjection: The opposition still waxes--

Hon. Mr. Baker: We still wax eloquent over the abuse of Parliament and all that, but I note there is now less and less attention paid in the press to an allocation of time--

Mr. Rotenberg: Let me just interrupt you there. If you

are getting into the committee stage of a bill in the House, which you have, I gather?

Hon. Mr. Baker: No.

Mr. Rotenberg: You do not have committee of the whole House of any bill?

Hon. Mr. Baker: Rarely. Only on tax bills.

Mr. Rotenberg: That is maybe where we get hung up, because our bills can go clause by clause in the House, even though they have been to committee. The bill in your House that has been clause by clause in committee cannot go to committee of the whole?

Hon. Mr. Baker: No, a tax bill is in committee of the whole at the clause-by-clause stage.

Mr. Smith: Of a tax bill, that's all.

Hon. Mr. Baker: Only tax bills.

Mr. Rotenberg: But other bills are clause by clause in standing committees and when they come back to the House, they go automatically to third reading?

Hon. Mr. Baker: No, they go to what we call report stage, where there is opportunity for members of Parliament to put down amendments that have been defeated in the committee, and also other members can--

Mr. Smith: Just let me mention that report stage was starting to be used as another filibuster stage by the opposition. To avoid that, so that it would not become a perversion of the intention of report stage, there is a 10-minute time limit on speeches in report stage, right from the first minute. That makes it almost impossible, or very difficult, to mount a lengthy filibuster.

Mr. Rotenberg: In your allocation of time, report stage on a major bill can be just one day and that would be acceptable to the opposition?

Hon. Mr. Baker: One day for each stage.

Mr. Rotenberg: No, but reporting is a stage.

Hon. Mr. Baker: It is not acceptable, but it is done.

Mr. Rotenberg: If it is a long bill with many clauses, what David says in effect is that no member speaks for more than 10 minutes on the whole bill or 10 minutes on any one clause? On the whole report?

Hon. Mr. Baker: Our rules of relevance are sometimes observed more in the breach than otherwise.

In report stage quite often there is a wide-ranging debate on one particular clause, the clause which one might be at at that time. That has never bothered us. I have never had to address that question, because the Speaker and Deputy Speaker are--

Mr. Smith: It is on each clause, though.

Hon. Mr. Baker: But it is on each clause.

Mr. Chairman: Ten minutes on each clause.

Mr. Smith: Theoretically.

Mr. Chairman: Boy, you might as well do what we do. It is the same thing practically, is it not? It is clause-by-clause consideration, really.

Mr. Smith: you only get it on controversial bills, quite frankly.

Hon. Mr. Baker: I am expecting that at some stage during the Income Tax Act amendments which are before us now--there are 139 pages in that bill, it is a large one--the government will get disgusted and--

Mr. Smith: I think that is a reasonable expectation.

Mr. Rotenberg: Then if the government allocates--

Mr. Breaugh: I want to ask Walter, from an opposition party's point of view, traditional thinking would have us believe that the great merit for an opposition member is an ability to speak ad nauseam about something. I have a little difficulty with that. I do not really see any sense in it.

The traditional parliamentary point of view is that you cannot do very much but you can make it inconvenient for the government. They are going to have to sit around and listen to you for a long period of time. What is in it for you to accept something like time limits?

Hon. Mr. Baker: I think the major thing for us is the changes in our system in terms of committees. I think that is the major consideration. I was going to deal with that in the agenda. I might as well deal with it now.

Heretofore, a standing committee of the House could not undertake investigations of matters, except in a very limited period within which standing committees have estimates before them, of any matter of public importance or with a reference from the government. That is the only way they could deal with it; if the government determined that that would be the case.

The best example came up in the House yesterday. That is the case of the Ocean Ranger. The Ocean Ranger went down; 84 Canadians were lost in an American rig that went down in Canadian waters. There was a great argument over safety and what happened there.

There was a request made early by the chairman of the transport committee that that committee be given a reference to look into the matter. The government demurred and for whatever reason did not do so.

It became an issue in the House before; it is an issue in the House again because an American committee--I do not know what jurisdiction it is--but the maritime commission of the US Congress had convened and begun hearings within a week of the Ocean Ranger going down. We contrasted our position with that.

Under the present system, there could be no parliamentary inquiry except in the estimates process, which is consideration in committees, which is most unsatisfactory--it is short, there is a guillotine and what have you--unless the government gave us a reference. Under our rules, that committee now has the ability to deal with a subject matter like that. The committee that Bill Blaikie and I are on with John Reid are presenting some refinements on that rule to make sure that committees are independent of the government in the jurisdictional sense. They are still subject to the majority of government members, but when an issue does arise, where the government says, "No, you cannot do it; we do not want you to do it," there is at least an opportunity in our proposals for that political issue to be decided by the members of the committee.

10:40 a.m.

Rev. Blaikie: One thing that should be said is that we do not really know what powers we have given to the committees in practice because we are just embarking on the experiment. The next year will tell just what kind of powers the committees can gather to themselves through the changes that we have already made. I am not sure whether or not a committee could say, "Let us look into the Ocean Ranger incident." They would have to do it within the context of an annual report that was automatically referred to them, or something like that.

This will develop and we will see just what kind of powers the committees can have and what kind of powers the government will permit the committees to have within the new framework and what kind of moneys it will make available. You can decide to investigate things, but if you cannot get money for staff and for all the other necessary things for an adequate investigation, the new rules will not mean all that much.

To the question of what the opposition is getting in return, the general philosophy has been that up until now, in a parliamentary process that is so dominated by party discipline, the only way that opposition parties and opposition members can feel that their presence here makes any difference is by delay.

What we are looking for is a system in which members of Parliament individually and opposition parties have a more meaningful say in the process, so that there is not this collective and individual temptation to always delay in order to feel that your being here makes any difference at all. The name of

the game is to trade off the powers of delay for meaningful input. What inputs have been built into the system with some of our experiments or some of the things that we will recommend in the future, opposition members and parties will have to decide. That is what we are looking for.

Hon. Mr. Baker: We have to start somewhere.

Mr. Chairman: In other words, the reason for the reduction from 40 minutes to 20 minutes, the quid pro quo was the 10-minute question period, was that it?

Mr. Smith: No, to be able to schedule more.

Rev. Blaikie: All those speeches which were formerly 40 minutes were reduced to 20 minutes, and on to that 20 minutes was added a 10-minute period for either questions to the member who had just spoken or comments on the speech that was just given. The purpose of that really did not have anything to do with timetabling. It had more to do with trying to restore some authentic debate to the chamber.

I was not there in the old days and I do not know what things were like, but apparently ever since TV, and perhaps even before, we had been getting set speeches. People get up and do a 40-minute number and they are not going to answer any questions because that would spoil the packaging for cable back home.

Mr. Smith: That would be taken from their time.

Rev. Blaikie: Besides which, they were not very anxious to answer questions. The routine would be to say that they would answer questions at the end of their speech if they have any time. Of course, they made sure they did not have any time. They were always available for questions; it was just that they did not have any time.

What has happened now is that there is this compulsory 10-minute available for questions and comments. The idea is that there actually be some genuine, human conversation, an exchange of ideas and debate and criticism, and I think it is working out.

Hon. Mr. Baker: So far, very well.

Mr. Chairman: Is it working out? Is it being used?

Rev. Blaikie: There is no time limit on what these exchanges must be; it is really up to the good judgement of members and of the Speaker. The idea is that the member whose speech is being questioned or commented upon will get the last word, and so far it has worked out. The Speaker, in the standing orders, is instructed to give priority to members--

Mr. Smith: On the opposite side of the House.

Rev. Blaikie: --from the other parties. You can get up and ask a question. It is like a mini-question period after every speech. The idea, as I have said, is to restore debate, but also

to make members a little more wary about some of the things they say in their speeches if they know that at the end somebody is going to get up and poke a few holes in their argument.

Mr. Smith: One of the other things we wanted to avoid was--in my position, I have on occasion, when we weren't ready for a vote, gone in and told somebody to get up and talk for 20 minutes or read the following speech.

Mr. Breaugh: It never happens here.

Mr. Smith: Well, only once or twice. You have to do that sometimes, but on balance, it's not a good thing for Parliament and I think we want to diminish it.

Before we leave the committees completely, I wanted to give you a bit of the other perspective on the extent to which we have opened up the ability of committees to investigate. I don't think it was the intention of the government members to go the American system whole hog. I don't think we want to have witchhunts and fishing expeditions and House Committee on Un-American Activities type of thing. The actual mechanism is that any annual report of a department or an agency or a crown corporation or a subsidiary of a crown corporation that, by law, has to be tabled in the House, is automatically referred to the appropriate standing committee and investigations and inquiries may be made thereof.

I think what really was in my mind, and maybe I am speaking here not so much as a government member, is that an area where committees haven't really been able to get their teeth into through examination of the estimates, although I think imaginative members could if they really wanted to but they really haven't, is the whole question of policy development. Often the people who are really more responsible, as you all well know, for policy development aren't so much the politicians but the bureaucrats.

The hard facts are--maybe this is even truer in Ottawa--that in Ottawa the House will be sitting 175 sitting days a year. Ministers will be speaking all over the country, sometimes 150 speeches, trying perhaps to satisfy a constituency several provinces away and spending a lot of time in planes, and often the people who are really putting in the time in policy development are obviously the bureaucrats. What I, as a parliamentarian, think is a healthy thing is to get those guys in front of elected people so they can be questioned and so we can get into the whole question of policy development. I think that is what appealed to members from our side more than fishing expeditions looking for scandal and that sort of thing, to get our teeth into policy development and policy options.

Mr. Breaugh: I wonder if I could put one little hobby horse of mine in front of you for your consideration. My observation here and in Westminster and in Ottawa is that for the ordinary member most of your time, the vast majority of your time, is wasted time; you are not doing anything constructive. Westminster has its own cute way of dealing with it. My observation there is that there may be over 600 members, but the

joint is run by maybe 50 or 60 people who take it on as a full-time avocation and they all have their clear-cut roles to play, and the rest of the people amuse themselves by getting another job, writing books, doing plays, whatever, and they roll in for the votes and all that stuff.

10:50 a.m.

This is a smaller House and most of us stick around. In Ottawa, my observation there is that it is not too dissimilar to our place. I am really concerned that at some point in time that tremendous waste of human resources is taking a terrible toll on the system. Maybe it goes to what David says, that there is a vacuum there that is filled by people who are not accountable. Nobody knows who they are. They write reports and policy papers and put them all together, and by the time the poor minister gets something handed to him, he doesn't have any options left or his options are limited. He is stuck with whatever that faceless group came up with. On the opposition side, with far less resources, we are supposed to pull this all apart, which rarely happens, even the occasions aren't there to happen.

What have you done in your deliberations so far for the ordinary member of Parliament on all sides, because I think this is just as true on the government side of a Parliament as it is on the opposition side? For the ordinary member, your job is to stand up at the right time and vote the right way and shut up the rest of the time unless somebody tells you differently. Without, as David says, going whole hog into an American congressional system, what is in there that allows a member to come to a Parliament, develop a line of interest and actually make some changes, make some contributions?

Hon. Mr. Baker: Could I just open up the response? I think what we have done with respect to committees is a beginning of that; I really believe it is the beginning of that. When members come to terms with the possibilities for this new committee system--whether we have as yet, the experiment has just begun--the kind of positive approach that David has talked about will develop and members will have an opportunity through smaller committees, through committees that have more permanency in terms of members.

Perhaps at some stage through a subdividing of the existing standing committees, as the experiment continues, into smaller and more specialized groups, members will have an opportunity. Committees themselves will gain more respect, in terms of bureaucrats and members of the government, than Parliament generally enjoys with them now. I believe that is the germ for what you are talking about, which is not Utopian but may be difficult to reach; the germ of the idea is there.

I don't believe in 10 years of operation that you will see the opposition members looking upon scrutiny committees as scrutiny committees in the partisan sense all the time. I think that they will be looking at it from the point of view of contribution to the development of public policy.

Our House is an interesting one; I don't know about yours, but the age of members in our House is falling each year. There are younger people coming in every year.

Rev. Blaikie: Some of us who came in in 1979 are four years older now.

Hon. Mr. Baker: Four years older and battered somewhat, but the age of our House is coming down. People are coming into that Parliament, and I am sure that is the case here, out of professions and businesses and other occupations at which they could get things done, and they run into this wall of frustration. It doesn't matter whether you are a Liberal, a Conservative or a New Democrat, there is nothing particularly illuminating or uplifting if you are in the government and all you do is vote yes or if you are in the opposition and all you do is vote no, if you can't from time to time ask the question why or why not and perhaps make a contribution that way.

When you look to me, you are talking to an optimist about the system. I believe the germ is there in what we have done to preserve the parliamentary system, on the one hand, which I frankly would like to do--I join David in that--but also to give not just the opposition, but members of Parliament generally, the right to ask the appropriate questions and to have the appropriate tools to do the job of scrutinizing in the best sense of that word.

Mr. Smith: I want to pick up on one area that you touched on that we really haven't expanded on, and that is this whole business of smaller committees and substitutions, because I think I need to explain what we were trying to do there.

We had two large committees, agriculture and external affairs and defence, that have 30 members and the rest have been 20, but we have a very loose substitution rule. What nearly always happens is that the government has a point man on a standing committee; I invariably seem to wind up doing that lot. What you are doing, basically, is deciding what is going on.

On a 20-man committee, you just make sure that you have your 11 members there and when you put up your hand, 11 hands go up and they are just looking at you. The same thing is true on the other side, maybe to a lesser extent, they don't require the same discipline. What will happen is I'll be in there and we're coming to a vote. We always have a whip representative in each committee. I'll say to the whip, "Go out and get me six bodies." We'll have a speaker keep it going until he does get me six bodies. Those people don't know anything about what they're voting on and they can be substituted by the whip on one second's notice.

This wasn't a good thing. I have been chairman of a small special committee that Walter made reference to, the committee on the disabled and the handicapped. We put out a lot of good publications and a lot of recommendations that I think have really been meaningful and resulted in some action. One of the good things about it was that we had seven members. It was a four, two, one split. When we set it up three years ago, there were no provisions for substitution of members without, literally, a special resolution.

What we've done is we've basically cut the size of committees in half. The 30 goes down to 15, 20 goes down to 10. What that will really mean is that members will only be, as a general rule, on one committee. In Britain every member isn't even on a committee. You don't have a right to be on a committee. By and large most members will be on one committee. Then there is a strict substitution rule that unless you're substituted 24 hours in advance, substitutes can only be drawn from a panel of alternates equal to a party's representation.

On 10-man committees, and we're going to have a row about this in the House tomorrow actually, the split will probably wind up six, three, one. I could go on about that for a long time, but this raises the question of independent chairman and that's what that's about. But on a six, three, one split the Liberals would be entitled to six members, plus six alternates, and no one can come in and vote unless they are a member or an alternate. You'll be on one committee and an alternate of a second committee.

Mr. Chairman: Only three for you, Walter?

Mr. Smith: The idea there is that if you're on a committee you're expected to really get to know what it's all about. You're expected to be there. I think that technically you have reduced what a member can do, but you've given him much greater responsibility in the area in which he is working. I think it will be a good move.

Mr. Breaugh: I am not a great fan of the American system, but I really have to admit that they've got something straight. When we looked at, for example, appointments, and compared what's done in Canada or any parliamentary system and what they do, it seems to me from a government's point of view the great advantage is if you pick someone out of a hat to chair a committee on something or a royal commission or do an inquiry, if that guy's a dud you have to wait until the end of it to see that.

What the Americans do is they at least give him a little trial by fire. You get in front of a committee of the state legislature or whatever and if you can't cut the mustard there, it's probably better from the government's point of view to find that out initially, rather than let this citizen go off for 18 months and investigate and inquire and then turn out to be a dud. They kind of cut that one off at the pass, and I'm really amazed that we don't do very much of that at all.

As a matter of fact, it's often true, forgive me for saying, that when appointments are made nobody but a very small group of people know whether that individual has any expertise, qualifications, would do a good job or a bad job. One of two people, probably not elected for the most part, will be making those decisions.

Mr. Rotenberg: Here the appointment is a government appointment. There it is a congressional appointment, it's not a government appointment. There is a vast difference.

Mr. Breaugh: All right, it's the same kind of thing but--

Mr. Epp: I doubt very much that three or four members of the government sit down with that particular person, whether it's Mr. Macaulay or anybody, and put him to a test of fire to see whether he can answer a number of questions within the realm--

Mr. Breaugh: The other thing that was really quite dramatic in talking to some of their people was that at least at the state level, California in particular, the budget process is so much more sane than ours. Traditionally in Parliament the theory is one person knows what the budget is and the rest of the Legislature waits on budget night to hear what this great thing will be all about.

What a stupid idea that is if you stop to analyse how really dumb a process that is compared to what it could be. There could be committee analysis. There could be public reports. There could be input all along the way and finally you arrive at a rough consensus about what to do. Government is going to be making some decisions, but our whole system is completely ass-backwards in my view.

Hon. Mr. Baker: We have not begun yet in Ottawa. We have only had agreed to the House what was do-able, that's all, and what we felt there could be some reasonable agreement on. If you take a look at the future section of the report you will see that one of the things we are going to be talking about is, in fact, the budget process.

11 a.m.

We agree with that generally, that there are some ancient anomalies in the process that in a modern society ought not to exist.

For instance, why is it almost a subject for the resignation of the Minister of Finance if the Minister of Finance of Canada should go to provincial treasurers and discuss in an open way the things that he is thinking of? My God, we all represent the same people. We have to come to terms with that.

Why is it that when the Canadian Manufacturers' Association came to our government, for instance, the two people they talked to about their proposals was the Minister of Finance and I was the other one, the Minister of National Revenue. I was Acting Minister of Finance then. It was their choice or the government's choice as to what they would be saying to the Minister of Finance if they would release their statement.

Why is it that there ought not to be some process by which there can be public input, through Parliament or otherwise, into the committee or by debate into the budget-making process? Why shouldn't opposition parties have to, in the course of a debate, indicate their views in terms of what ought to be done?

Our whole process is--you used the word "pass-ackwards;" you're right. That is a problem. There is so much traditional secrecy around it that goes against the grain. There are some things that should be secret, certainly. No one should be able to profit from insider knowledge, but with those limitations. I suspect they are a lot narrower than we traditionally have viewed them.

There are a great number of things we can do in the process, but do not confuse what we have done as creeping congressionalism, because it's not intended that way. In the committee system it would still be the majority on the committee, in a majority government situation, that would decide whether or not a parliamentary committee could do something.

We have not reached the level in Canada, and aren't likely as long as we are in the parliamentary system, of having the political entrepreneurship that is enjoyed by congressmen in the United States. We can't do that. They are all political entrepreneurs, but their party system is one in name only. Ours is very strict and likely will be that unless we can come to grips with the question of confidence in the House of Commons.

Mr. Smith: We are working on that, too.

Hon. Mr. Baker: We are working on that to see whether or not there is some way in which members can express themselves--still maintaining the question of confidence as the keystone of the parliamentary system--and develop a shade more independence of the party structure and not destroy it completely. That's a delicate job.

Mr. Chairman: Mr. Robinson, did you have something you wanted to add?

Mr. Robinson: I wanted to go back to Mr. Blaikie for a minute and his comments about meaningful input, meaningful input hand in hand with delay. We have had some modest experience with the delaying tactic here in Ontario over the past few months. I think during that exercise we all came to realize that it was born out of a certain amount of frustration in addition to whatever the pure politics of the situation may be.

I am curious to know from you, in terms of your role as a member of the House of Commons, now you would identify meaningful input. What would you see as meaningful input from your standpoint?

Rev. Blaikie: I might come to regret the use of the word "input." I don't like those kinds of analogies, but they are in vogue these days.

In any case, I think we are moving towards that in the reforms we've suggested, some of which are now in place in the committee system. I don't have any illusions about what would occur where there is a serious ideological disagreement between an opposition party and the government. All the input in the world

probably would not solve the disagreement over the Inflation Restraint Act here or six and five in Ottawa. No amount of input would have made my caucus, for instance, vote for the government's six and five bill, or whatever.

I am not suggesting that we could get over or should even want to get over serious differences of opinion. Within the committee structure, when it comes to scrutiny, to the kind of policy development that has been possible through these task forces on issues where the government does not have a strict position--I was on the task force on federal-provincial fiscal arrangements, which I also felt to be a very worthwhile experience; if we can arrive at a narrower view of confidence, so that there are more issues where we had free votes--and I am sure there will be people in my own party that disagree with me on this--where we were not bound by caucus discipline as often as is the case now--this is part of our political culture, so that there will not just be rule changes that would change that; then I think the members of Parliament in general would feel that their own mind, their own independent judgement, their own reflections on the issues would be more important. I also think the public wants to feel that. They want to feel that it makes some difference to talk to this guy.

Mr. Robinson: Would you say that, rather than perhaps meaningful input, what you are looking for is meaningful participation?

Rev. Blaikie: You can call it what you like.

Mr. Robinson: Input suggests that you have some hand in the decision-making process, as opposed to participation.

Rev. Blaikie: I think there are places where you would have input, so far as policy development though task forces is concerned, but also more meaningful participation. I was not using that just in the sense of opposition as over against government, but as individual members of Parliament having more freedom of scope to make a difference. If you are a doer and you like to feel you are accomplishing something, this is one heck of a place to be.

Mr. Robinson: I think we all have a sense of that some days.

Rev. Blaikie: If we want to attract and keep people who want to accomplish something in their work, we have to create a place in which they feel that is possible.

Mr. Robinson: Could I, in a general way, ask a question that goes to Rev. Blaikie and Mr. Baker? It is, from an opposition standpoint, on the matter of delay as a tactic. If you accept that delay is a legitimate tactic, in the sense of some particularly thorny ideological debate or in some more practical way, is closing a debate equally legitimate from a government standpoint, as you see it?

Hon. Mr. Baker: My view is that allocation of time is a legitimate use of the government power and has been for some period.

Mr. Smith: I would like a copy of the transcript here.

Hon. Mr. Baker: I might as well be nonest. I am on the record before.

That is a legitimate use of a government power; in fact it is inevitable under the system that we have pushed down in terms of fixed times of beginning and fixed times of ending. We have recognized a bit of the government's problem, because in the last two weeks or so we can, as a simple matter, extend the hours of sittings on the last few days of a session to allow the government to clean up its work.

We have said to the House of Commons that the government has to get its program through and has to use reasonable methods. We may have a difference of view as to whether or not one method is good or bad. I think closure has a political overtone which Canadian governments would rarely use, but allocation of time is a different bag, and I think we are going to see more of that.

No member of the Canadian Parliament ought to think, however, that is not going to be used much more by the government. They have a full chart of legislation, they know what they have to get done and, in order to get it done, they are going to be using it more and more. That is kind of the quid pro quo for the limitation on the session for the convenience of members.

Mr. Robinson: There seems to be some suggestion, though, that has been popular of late, both at the federal level and here, that closure, or even allocation of time, was such a rarely-invoked historical, almost catastrophic method of somehow reaching agreement when there seemed no possible other way to do so. Now it is very commonplace. In fact, there was some comment in our House last week that words such as "closure" and "allocation of time," which you would not hear in a hundred years, you now hear with quite familiarity two or three times a day or two or three times a week at least.

11:10 p.m.

Hon. Mr. Baker: I do not know how much has been used in this long session, but allocation of time has been used quite often, and I do not see the public storming Parliament Hill over that.

Mr. Robinson: Gentlemen, is it time, from your standpoint, that we turned the corner into that sort of new trend of recognizing that, as you say, the quid pro quo, if delay is going to be a tactic, then it really is no longer delay, it is simply using the time available, and that the government, within its mandate rather than invoking some guillotine motion, does have the ability to divide up what time should be used for what purpose?

Hon. Mr. Baker: I think it is axiomatic that the moment you take away from a government House leader the flexibility of continuing a session beyond what it perceived to be the normal

adjournment date in order to get a package through, the minute you remove that flexibility from him, it follows that the use of allocation of time will become more arguably acceptable.

It is certainly our experience in our House, whether you like it or not, that the government is using it more and more, to the extent that I do not see editorials written about it in the Globe and Mail.

Rev. Blaikie: You cannot remove this question of closure and time allocation from the politics of the issue, the bill on which the closure or the time allocation is used. I think it is obvious that time allocation is being used more often. When I came to Parliament, to me, like a lot of other Canadians, closure had acquired a certain kind of negative symbolic quality as a result of the pipeline debate in 1956 or whenever it was.

Mr. Chairman: The "what is a million" debate?

Interjection.

Rev. Blaikie: The whole idea of closure was terrible, but now time allocation is used quite frequently.

There is one thing you did not mention, however, which I think needs to be mentioned. Perhaps I was too harsh on the usefulness of delay because sometimes delay can be very important in allowing public opinion to develop. The best example of that, in my view--I did not say this at the time and certainly it was not the official view of our caucus--was that the delay in the constitutional debate.

Hon. Mr. Baker: A great time.

Rev. Blaikie: --allowed public opinion to kind of get into the constitutional debate. Had there not been that delay, we in Parliament might have gone ahead and acted unilaterally, which I think would have been a disaster. In this case, delay brought on the reference to the Supreme Court. Delay brought on another last-ditch meeting of the first ministers, all these sorts of things. In that case, which is, in my view, a political dimension wholly different from the six and five bill or whatever, delay actually permitted the Canadian public to get on board with the debate and to do some reflecting on whether this was what they really wanted to happen.

Hon. Mr. Baker: Mind you, we used procedural matters--and I had something to do with it--points of order, questions of privilege--

Mr. Smith: Spurious ones.

Interjections.

Hon. Mr. Baker: --to refuse to allow the government to get to the one thing it wanted to get to, i.e., a motion to close off debate. I think during that period we rarely used anything but that procedure.

Even though we have lost, in terms of the length of speeches, the 20 minutes or the extra 10 minutes at the report stage or what have you, we have not removed from our rules completely and the possible practices the use of delay as a weapon. It is still there. The dilatory motions are still there, available to us.

The interesting thing is it arose out of the bell-ringing incident and it's still possible, highly unlikely but possible, that the bells could be rung again. The motion for adjournment is still there.

Mr. Chairman: Are you thinking of changing that? Are you thinking of dealing with that?

Hon. Mr. Baker: I doubt whether we'll bother. That was an incident in parliamentary life that's likely never to be repeated. I just say that to you.

Mr. Smith: What happened there was that the whips just refused to show up and it was the tradition, it wasn't the standing order. I have always thought a reasonable amendment which would solve it, quite frankly, is that a motion to adjourn automatically expires at the automatic adjournment hour of the day on which it's moved.

Mr. J. M. Johnson: When you say "whips," how many whips?

Mr. Smith: Just the two official whips.

I want to get back to this whole question of delay because, sure, I think there are occasions in which delay brings some benefits, but on balance the benefits aren't all that great. Very rarely do you hear strong arguments advanced beyond about the first day of a debate. Your lead speakers are going to be the ones who spend the most time preparing their arguments. Often when you get into the second and perhaps third day of debate it gets very repetitious, very boring, no one is listening to it at all.

I am very impressed by the British system of one-day debates with no automatic adjournment hour and letting nature take its course about four o'clock in the morning. I happen to think that those debates are probably good, packed-in debates.

When we were over there they scheduled a two-day debate on the Falkland Island report. It was going to be two days and at the end of the two days, that was it. It was the government that took the initiative in doing that. They did the same thing with a very important and significant report regarding rail service in Great Britain.

We have abandoned evening sittings. I am not sure if you're aware of that, but the House doesn't sit past 6:30 p.m. now. The last half hour is what's called the late show, from six to 6:30, but we don't have evening sittings. The British abandoned evening sittings and then they went back to them after about a one-year experiment. If the legislative flow becomes too impossible or

impossible to the point that you can only cope by having time allocation all the time, it may well be that evening sittings can, in fact, become an ally of the government because of the effect it has in wear and tear.

Another thing we've done is that we used to have private members' hour three days a week, an hour each time. We have now lumped them all into Wednesday afternoons.

The House doesn't sit Wednesday mornings. That's reserved for caucus and the only matter of business on Wednesday afternoons is private members' hour. One of the problems that this is causing for the government--and I don't know if you've thought about this, Walter--is that it really isn't hours, it's days more. The government has lost a day a week.

Whether or not something is debated for three hours or four hours, you know, you can always get people to fill in that extra hour, and we have lost a day a week. I don't know that it's necessarily healthy. Everyone is starting to flee the place on Wednesday.

Another thing we did was make it so that you can't have any recorded divisions on a Friday. They are automatically deferred until Monday, which does have some advantages, too, in terms of the necessity for government members to hang around there.

Mr. J. M. Johnson: How many members would you have in attendance on Friday?

Mr. Smith: Another thing we've done is put in a 15-minute bell on the quorum call, so you could now have a dozen members by about four o'clock in the afternoon; you know, 10 or 12. There was a famous event which occurred on a late Friday afternoon in which Walter and I played a role but we won't get into that. We got through a great bill, Canada Day.

Mr. Chairman: You're still sitting Friday afternoons?

Mr. Smith: Till five o'clock.

Mr. Chairman: How come you've never considered changing that?

Rev. Blaikie: We did.

Mr. Smith: We changed it in that you cannot have a recorded division on Friday afternoon. On anything that would precipitate a recorded division, the vote is automatically deferred until the following Monday. In fact, I think tomorrow will be the first day that that happens.

Rev. Blaikie: Not on procedural motions. You could still move a motion to adjourn on a Friday.

Mr. Smith: Yes, but that is not going to bring down the government.

Hon. Mr. Baker: There was some considerable pressure to talk about Parliament operating for a four-day week. We determined that would not be saleable in the country.

Mr. Chairman: What about four and a half?

11:20 a.m.

Mr. Smith: Friday afternoon is a good time to get bills through, noncontroversial bills.

Mr. Chairman: As far as the government is concerned, sure.

Mr. Smith: Sure, we like it.

Hon. Mr. Baker: I guess I've been conditioned by a period of time I spent as a government House leader. I would not want to see the Fridays go; in fact, advance that in the--

Mr. Chairman: Of course, you live awfully close, Walter.

Hon. Mr. Baker: No, but what we have done, so if there is a quorum bell the day would not be lost, the government always keeps enough members around to look after that. We have ensured, however, that by Thursday night if a member had a pressing reason to be out early he could be away, because there would be no votes, even if there was an allotted day given to the opposition, although we only have to disclose our subject 24 hours before--

Mr. Smith: If it's a no-confidence motion you have to give 48 hours' notice.

Hon. Mr. Baker: You have to give 48 hours' notice if the vote was going to be on a Friday, which is a sensible thing. We have tried to marry the convenience of the legislative time with the natural convenience that's important to members who live in a country that's 4,000 or 5,000 miles across.

Mr. Chairman: Herb, did you have some questions?

Mr. Robinson: I just wanted to conclude with Mr. Baker.

What you're saying is that in Ottawa at least you are trying to enter some new age of civility of the process, inasmuch as there is no diminution of the recognition of your own individual role within the parliamentary context. For matters of practical convenience you are trying to make a variety of accommodations to make the process work better.

Hon. Mr. Baker: I think that's a fair statement.

Mr. Robinson: That's something we could well stand around here.

Mr. Chairman: For sure.

Mr. Epp: I have a question of Mr. Smith. It has to do

with a comment he made earlier about references to committees and the fact that you were afraid that committees would go off and have a witch hunt and so forth and McCarthyism would come in, etc.

I am wondering why you would feel that about the opposition when, in fact, you had a minority government from 1972 to 1974. Were there a lot of witch hunts to which you can make references?

The opposition's numbers at that time were greater than the government's. At that time they could make references to committees. They probably had majority numbers on the committees. Were there instances there where they went off on a witch hunt on a number of occasions and therefore you had justification for this here?

The reason I say that is because we have the same thing here, where the government is so fearful that the opposition might refer something to a committee.

Mr. Smith: Looking for skeletons in the closet.

Mr. Epp: I recognize you've changed that now with the new rules, but why were you so fearful?

Mr. Smith: I don't think we were that fearful in that we did agree to this change, which is a pretty significant one. How far it will go, only time will tell.

No, I don't think it has ever been the parliamentary tradition in this country that witch hunts exist, but we have observed some of the excesses that have occurred in Washington and we wanted to avoid that.

During periods of minority government I can't recall any. I wasn't a member then, but I was an executive assistant to several cabinet ministers so I was quite involved, but I can't recall witch hunts ever being a part of the Canadian tradition. We just didn't want to start that.

Mr. Epp: The way I see the opposition is that I think they are equally as responsible as the government. They ultimately have to be accountable to the voter out there and I don't think it--

Mr. Smith: As a government member, I, for one, think it's a healthy thing. I can tell you there are some ministers who are not that keen about this experiment. If in the long run it means that they have to be on their toes more and they have to know what's going on in the department more and they have to be more involved in policy development because there is going to be more scrutiny of it, I view that as a healthy thing for Parliament, regardless of who happens to be forming the government.

Hon. Mr. Baker: You also have to remember, Mr. Chairman, that all of us, the whole system, are subject to public scrutiny. All of us are likely held, as a system of parliamentarians generally in the civilized world, in rather low repute. It's unfortunate, but it's true.

I think there is going to be a rather heavy burden on people to make this system work. People don't understand how the system works. They have a feeling it doesn't work. I think all of us are going to have a responsibility to use these powers we have appropriately.

But still, I believe the end result of it will be that there will now be at least a public discussion on a refusal, and there will be a political price to pay if there is a refusal, to look at something that is a matter of public necessity to be looked at.

Equally, there will be a political price to pay for a party that presses for something when there is not seen to be a political necessity. The great test, ultimately, is the price one pays for the utilization of the position and the power that one holds, whether it is in the opposition or the government.

Mr. Epp: I have just one short question. Mr. Baker referred earlier to some of the witnesses who came before the committee in their planning for the changes. Who were some of these witnesses?

Hon. Mr. Baker: Alistair Fraser, former Clerk of the House of Commons, came to the committee and ultimately became a consultant to the committee and worked with the committee during this first stage. Dr. Stewart, a former member and now a professor at St. Francis Xavier University, was at one time parliamentary secretary to Mr. McIlraith when he was government House leader in the House of Commons.

In the accountability stage, we have had the auditor general, the comptroller general, the secretary of the Treasury Board, a number of academics, the Canadian Bar Association, Dr. Walter Baker--no relation but a great fellow, a constituent--Dr. Franks of Queen's, Eugene Forsey, Mr. Stanfield, as part of the (inaudible), the Canadian Business Council on National Issues was there, and we had many who submitted briefs, who were not called as witnesses but whose briefs were available.

We also petitioned all members of Parliament to make submissions. The interesting thing is they didn't respond.

Mr. Smith: We are also having, and this is something we haven't got into--we had Jim Jerome, the former Speaker, at an off-the-record luncheon; we will be having an off-the-record meeting with the current Speaker. That is something that I think can only be helpful if it is done in camera, but we will be doing that.

Quite frankly, rightly, she has been reprimanding members in question period a little more than she previously did, and I think all of us have welcomed it. We encourage her to steel her resolve and get tough with members who abuse time in the House.

Mr. Watson: We have glossed over this a little bit; the matter of timetabling and the matter of scheduling calendars, and that sort of thing. There must have been some give and take on

setting dates and changing this time and starting earlier. I suppose we are talking about--

Mr. Chairman: Sitting in the House, you mean?

Mr. Watson: --nuts and bolts, how the House operates. Would you like to expand on that a bit?

Mr. Smith: We looked at what the average was in nonelection years for the number of days on which the House sat and I think it averaged out at about 165. To look as if we weren't slacking off, we developed a schedule that averaged out at about 175.

What it really boils down to is that we have three semesters. There is a fall, a winter and a spring semester. The fall one starts the Monday after Labour Day; there is a one-week adjournment during the Remembrance Day week so that everybody can go home then. There is roughly a four-week break at Christmas, about a 10-day break at Easter and the House will then adjourn at the end of June until the week following Labour Day. That works out to 175 sitting days.

In a nutshell, what the government lost was the powerful tool of saying to the opposition, "We only adjourn when the following bills are done." The quid pro quo, basically, was tougher time limits on speeches.

We have kept the hours in the House the same. In other words, we now sit from 11 in the morning to one, which replaces the eight to 10 in the evening.

Mr. Watson: How is that working? That was one of my questions.

Mr. Smith: Government business is from 11 to one; question period is still at two.

Rev. Blaikie: Yes, or it could be an opposition day.

Mr. Smith: Whatever it is, it is the orders of the day. It's debate. Question period is still at two o'clock, Monday to Thursday, and at 11 on Friday.

I think we are going to have to use time allocation more; I think we are.

11:30 a.m.

Mr. Watson: In what spirit, either from your point of view or everyone else's, have they accepted the change? One of the things I get from constituents when they start talking about the Legislature and I say, "Three nights a week we go to 10:30," is they just look at you.

Mr. Smith: Public opinion, to some extent.

Mr. Watson: They say, "Are you crazy?" and I have to agree with them.

Mr. Smith: The bells focused on that, but I think the columnists, the media, Canada AM, virtually every aspect of the media was harping away that Parliament wasn't particularly efficient and the time had come for reform. I think it was irresistible for any party to stand in the way of reform. There were the odd individuals in different parties. I hear what goes on in his caucus a bit--

Hon. Mr. Baker: And I hear what goes on in yours.

Mr. Smith: --and he hears what goes on in ours and I know who stood in the way of it. Quite frankly, the consensus in each party found the desire of the public to come to grips with it irresistible.

Mr. Rotenberg: When you meet in the morning, when do your committees meet? Do they meet while the House is meeting?

Mr. Smith: Yes, and they can meet in the evenings, too.

Mr. Rotenberg: But not during question period, I gather.

Mr. Smith: No, they wouldn't meet during question period. Theoretically, they could, but the House leaders would never agree with that.

Hon. Mr. Baker: There is one worry in terms of committees about breaking off at six o'clock at night, subject to the adjournment debate for the half hour. There may be some difficulty in scheduling and having committees manned at night. That is a question mark still in my mind.

Members will tend to disappear, members will be more likely to bring their families to Ottawa because there is some certainty in terms of the school year and what have you. It might not happen, but it is a worry I have that it will. I, frankly, find the hours much more convenient--

Mr. Smith: He, of course, lives in Ottawa.

Hon. Mr. Baker: I live in Ottawa.

Mr. Smith: It should be pointed out that the spouses of members who live in Ottawa think that no evening sittings are great; the spouses back home don't like it one bit.

Hon. Mr. Baker: Spouses have been known to end strikes, I don't know why they can't change the hours of Parliament.

Rev. Blaikie: I would like to comment on something that was said earlier. We just touched on and then left the subject of the Speakership.

One of the other reports that we have made to the House--our fourth report, I believe it was--had to do with the process of

selection of the Speaker, in which we recommended that the Speaker be genuinely elected by the House by secret ballot, so that the Speaker would actually be an agent of the House of Commons.

This is all part and parcel of what I think to be another general thrust of the work of the committee, and that is to restore power to the House as over against the executive. So our recommendation on the Speakership is to be seen, not as a challenge to the Speaker, but as a challenge to the Prime Minister and to the cabinet. There is generally a feeling that that is why they don't like it, I guess, and that is why it hasn't gone anywhere.

Mr. Chairman: I am amazed that your committee found that a clear majority is 50 per cent plus one.

Rev. Blaikie: You are amazed that we found that?

Mr. Chairman: Yes.

Mr. Smith: Joe Clark hasn't found that.

Rev. Blaikie: In other places it's 66.9.

Hon. Mr. Baker: I will make no comment on that.

Rev. Blaikie: I don't know what happened to that report. We made the report and then it seemed to drop off into a great void.

Mr. Smith: Yes, it's under consideration.

Rev. Blaikie: It's under consideration.

Interjections.

Mr. Epp: I gather it wasn't part of the package, because earlier you said the package was adopted--

Rev. Blaikie: That's what I'm saying.

Hon. Mr. Baker: It was a separate report.

Rev. Blaikie: We made it a separate report because we knew it was controversial. We thought it might jeopardize the acceptability of all the others, so we decided that we wouldn't table this report until our third report was accepted. The minute our third report was accepted and came into being, the next day we tabled that report.

I just wanted to emphasize that part of what we are about is trying to give some power back to the House of Commons and to restore that sense of Parliament originally making the king accountable. The problem right now is that the king runs the House. The king is the Prime Minister for all intents and purposes. There has been a blending of these two roles.

What we want to do, through various reforms, is to restore to Parliament its sense of being a forum that is independent of the executive in as many ways as can be done without jeopardizing the whole notion of parliamentary government.

Mr. J. M. Johnson: I wanted to ask a couple of questions relating to your proposed calendar. I guess it is accepted now for this year?

Hon. Mr. Baker: For this experimental period, yes, sir.

Mr. J. M. Johnson: I am interested in attendance, because it takes an amount of responsibility to try to keep the few people here once in a while. I would assume Monday and Friday would be tough days for attendance?

Hon. Mr. Baker: It would be tough if there was a vote on a Monday or on a Friday. It would be harder on members, let us say, but not in terms of the operation of the House of Commons.

Mr. Smith: It is the toughest for us. It is not so tough for them.

Mr. Rotenberg: you have no votes on Mondays and Fridays?

Hon. Mr. Baker: We do.

Mr. Smith: We do not on Fridays, but we do on Mondays. There will be a call for a vote tomorrow, I expect, which will be deferred until three o'clock Monday. But the government knows when it will be scheduling something that would likely precipitate a vote. At our caucus yesterday, our members were all told they had to be there at three o'clock Monday.

Mr. J. M. Johnson: So it does not create a problem.

Mr. Smith: I do not think it will. We have pretty good discipline with regard to that.

Hon. Mr. Baker: Most governments do.

Mr. J. M. Johnson: What about a quorum? Do you have a problem with the quorum in the House on occasions?

Hon. Mr. Baker: Oh, yes.

Mr. Smith: The rule is that the Speaker does not notice the absence of a quorum unless it is drawn to his attention.

Hon. Mr. Baker: We have had occasions, I would say, when it has been pointed out that there was no quorum in the House of Commons, sometimes after the fact rather than when it occurs. We have had an occasion when there is no quorum and, under the rules that we have had before, Parliament would close down once the Speaker found there to be no quorum. Frankly, that is a waste of time; hence, the provision for the short bell upon that condition being found.

Mr. J. M. Johnson: You have a 15-minute bell.

Hon. Mr. Baker: We now have a 15-minute bell. There are members there who will come to the House.

Mr. Smith: I think it is inconceivable that the House will ever fail for lack of a quorum with that provision.

Hon. Mr. Baker: Let us take the Mondays and the Fridays. It is a legitimate part of a member's life to be in his or her constituency and sometimes members who do not live in Ottawa permanently have to be there during business days. It is tough to get there in mid-week during business days. So Friday and Monday are natural days for them to be there. They can be there on Saturdays and for the other things they have to be there for. There are other activities that members are involved in.

I think that sometimes it is a waste of a member's time to merely fill a space in the House when he could be filling a space in an active committee. I do not think that is invariable, but sometimes that is the case. Certainly the work of the committees ought not to be held down or set back because there happens to be a rule that there should be 20 members in the House.

The question, with respect to the House, is whether or not the debate is being carried on in a meaningful way. That is the real question, whether the House is functioning as a House and whether the committees are functioning. That is the real question, not just head-counting. We have, in terms of our discussion on quorum, come to too much of a sense of merely counting heads. I am not suggesting that time cannot be used usefully in the House. When I was opposition House leader, I used to spend a great deal of time there. I was not taking part in the debate or worried about perhaps a procedural problem; I was doing my mail. Maybe that is not the best way to occupy my time.

Rev. Blaikie: On this question of quorum and also on the quality of debate, I am not speaking for the committee here. These are my own views because we really have not talked about this much.

11:40 a.m.:

I think the problem of quality of debate could have to do with the low quorum. One of the reasons people can get up and say some of the ridiculous things they do is because there is nobody there. They would not have the nerve to say some of the things they say if there were 50 people there to hear it. They would be embarrassed.

There are houses in Europe and elsewhere where a quorum is 50 per cent. I have a feeling that if people had to get up and speak before 50 per cent of the House all the time it would bring a certain tightness to their comments--not to all; some people are incurably thick.

If you are speaking in the House, but for the knowledge that

this is being televised, you might as well speak into an echo chamber or into the void, because there is--

Mr. Smith: I have done that.

Rev. Blaikie: Yes. There is no one there; there is not enough people there for it to be a genuine forum or debate. It is useful to put things on the record and to send them home.

Mr. Smith: The British House, for example, has no quorum.

Hon. Mr. Baker: None at all.

Mr. Smith: They have over 600 members. We might have abolished quorum, but we would have to amend the British North America Act. That seems to be a difficult thing to do and not worth it.

Mr. Chairman: Long overdue.

Mr. Smith: A 15-minute quorum bell solves that problem.

Mr. J. M. Johnson: I have just one more question.

One of our biggest problems is the quality of debate. It is hard to assess it; I wish we had some mechanism. I do feel that too many members use the opportunity to put it on the record; they are really just interested in Hansard, not in who is in attendance.

They take up so much of the time of the House that it would be a convenient mechanism if we had some process by which they could be deemed to have made their speech, give it to the reporter and let it be dropped into Hansard and forget about taking the time of the House.

Rev. Blaikie: That is the American way. I don't really agree with that. If you are going to have something on the record, it has to be on the record.

On this matter of quality of debate, everything is related to everything else in this. One of the reasons there is not that much interest in debate also has to do with what we talked about before, about party discipline and all that. What is the sense of debating if you know before you start that you cannot change anybody's mind?

Mr. Breaugh: What you should do is televise the caucus meetings.

Rev. Blaikie: You can be as persuasive and do as much research as you want, but if the whole thing is a set piece before you even begin, the debate is really phoney, from start to finish, if we have a system in which all the votes are predictable. For me, a lot of these problems come back to the question of our political culture, the way our parties are run.

Mr. J. M. Johnson: Next week, we are going to enter into this very thing. We will spend three, four, five days, whatever

period of time, and there will not be one single person who changes his vote.

Mr. Chairman: That is because of the effectiveness of our whips, Jack.

Mr. Smith: I would like to point out one thing. I do not know how much you have looked at it, but on this whole question of getting on the record I think it is worth telling you a bit about the first 15 minutes of each day. We have changed this.

For some years, there was a standing order called standing order 43. If you had the unanimous consent of the House you could propose a motion, which could then be debated for not more than 15 minutes.

These 43s got to be quite ridiculous. They were usually shots against the other side or congratulations to some skier. Mr. Speaker Jerome ruled out the congratulatory ones, but it was getting a bit abusive. I am still referred to as Dr. No because I was ordered by the Prime Minister--requested by the Prime Minister--to say "no" to all motions that we had not been consulted about in advance and which we more or less agreed with. We just threw that whole thing out the window.

We still wanted to prevent members from jumping up on phoney points of order to get on the record. So, before question period each day, for 15 minutes--that is when the galleries are full in terms of the media and all that--we have now what is called members' statements. Any member can get up and say anything he wants except "Congratulations"; that is out of order because you would have birthday greetings sooner or later.

You can say anything you want about an issue for 90 seconds. What it means is that literally 10 members a day can do that, and the Speaker tries very conscientiously to give equal time to each side of the House. You can get on the record, say whatever you want for 90 seconds, and at the end of 90 seconds down you go.

Members are starting to make effective use of it, but it is a safety valve which allows them to get on the record something they want during prime time without wasting a lot of time.

Rev. Blaikie: One thing I have to report on this is that one of the intentions of that was that it would be divided more equally between the government back-benchers and opposition than it was under standing order 43. We hoped at that time that this would encourage government back-benchers not to get up and flatter the government, but actually to make some criticism of the government. There has been some flattery, but there has also been the odd government back-bencher who has got up and made a statement critical of government action. The other day someone got up and complained about the money being paid to Donald Macdonald, for instance. It was a Liberal back-bencher who did that.

Mr. Chairman: And that's where he'll stay.

Hon. Mr. Baker: If I may say so, looking at this rule, we had some worries about this when we proposed it because of the traditions of the place and the fact that we tried to do away with standing order 43 and add 15 minutes to question period at one time in the 1976 proposals, I don't think that showed in the proposals but in the discussion leading up to the 1976 proposals, which went nowhere.

It has been, really, quite a refreshing experience. In fact, we have in our caucus, the official opposition, a question period meeting in the morning, and one of the things we decide is who is going on the list. You obviously have something like that, too.

Mr. Smith: For the lead.

Hon. Mr. Baker: For the lead, and I am sure you must have something for opening statements because it is very interesting who is called; or if you don't, it couldn't have worked out better the other day.

There is a competition among members to get on the list. I have in a file that I keep on my desk, in the hope that I can get recognized some day by Madam Speaker, which means getting on our list, a series of one and a half minute statements on a whole host of subjects in which I am interested.

It has been taken to by members, I think we all agree. They enjoy this opportunity to express themselves in a meaningful way and, at the same time, to exercise independence. I suspect that this going to be much more influential in coming to the kinds of independence that Bill is talking about as one of the tools.

Mr. Rotenberg: Does she cut people off right after 90 seconds?

Hon. Mr. Baker: Yes. She stands up, and that is it. She calls on the next member.

Mr. Epp: Does she have a list of speakers from each side?

Hon. Mr. Baker: She does certainly from us. Does she do from you?

Rev. Blaikie: Well, there is a bit of ad hockery. If there is somebody we particularly want to get on, I send her a note.

Mr. Rotenberg: How many from each party get on out of these 10 people? How do you allocate the 10 people?

Rev. Blaikie: I think it is four-four-two.

Mr. Smith: We don't always have a full complement, so the next day we might get five.

Rev. Blaikie: I think she works it out on a weekly average. On standing order 43, one other reason that we changed it

had to do with public perceptions and the fact that our proceedings are televised, and standing order 43 was totally incomprehensible to the public.

Mr. Smith: To a lot of members, too.

Rev. Blaikie: The preamble was that it was a matter of urgent, pressing necessity, and many of them weren't. Then they were asking for unanimous consent to move a motion. No one in the public knew that. They thought that when unanimous consent was denied, that the House was expressing a negative judgement on the idea in the motion, rather than simply denying unanimous consent, which was useful from the opposition point of view and made the government look like a real bunch of bad guys because they were always saying no to these wonderful motions. In that sense, I regret the passing of standing order 43.

Mr. Smith: I was delighted.

11:50 a.m.

Rev. Blaikie: But it was incomprehensible to the public. I had many constituents asking me: "What is going on there in that first 15 minutes? Why do they keep saying no, or why does it never go anywhere?"

Mr. Smith: One guy did it in poems all the time.

Rev. Blaikie: If there is going to be more public viewing of the parliamentary process, then we have a responsibility to be more comprehensible to the public.

Mr. Rotenberg: How did the process work? The odd time there was a legitimate standing order 43 motion, once or twice a year, a legitimate motion the House would unanimously want to make a motion on.

Mr. Smith: We did one on Scharansky.

Mr. Rotenberg: How do you get that done now with standing order 43 no longer there?

Mr. Smith: That is very difficult. You can do it by private members' hour by agreement to advance somebody right to the top of the list, but that hasn't really been solved

Mr. Rotenberg: If you want to make a simple motion, I think in our rules the government House leader stands up and asks for unanimous consent to make a motion and, by prearrangement, he would get a motion through.

Hon. Mr. Baker: That is still possible.

Mr. Smith: It's still possible; anything is possible.

Mr. Rotenberg: On that Scharansky thing, if somebody wanted to make a motion--

Mr. Smith: For example, about 10 days ago Scharansky's wife was in Ottawa to see the Prime Minister. We put her in the Speaker's gallery, and I just stood up and made a statement and the Speaker then recognized her. I would have previously done a motion, but when I made the statement, everybody applauded and gave her a standing ovation.

Mr. Rotenberg: That was a private member's 90 second deal?

Mr. Smith: Yes, so it had the same effect, quite frankly.

Mr. Watson: Have the provisions of this 90 seconds and the provisions of the question period at the end of a speech cut down on the interjections?

Hon. Mr. Baker: I don't know if we can gauge that yet.

Mr. Watson: Was there any thought of the committee that--

Mr. Smith: By interjections, do you mean heckling, sort of?

Mr. Watson: Yes.

Hon. Mr. Baker: No, I don't think it has cut the heckling.

Mr. Smith: We like a lively chamber.

Mr. Watson: Sure, we like a lively chamber, but in a debate if you have to neckle at the time on a particular point, whereas if somebody is going to get a chance at the end to get up and tell the fellow he is a stupid fool--

Rev. Blaikie: You can wait.

Mr. Watson: --you can wait, if you know you are going to get that chance.

Mr. Smith: Yes, with the 10 minutes.

Mr. Watson: Maybe heckling isn't the right word.

Hon. Mr. Baker: I think we would generally agree that that has not yet been demonstrated to us, but we would all be prepared to recognize as a possibility that people will lay in wait for the member at the end when, on television, you could ask a cogent question about something you regard as nonsense having been put forward in a speech.

Mr. Watson: It seems to me you are playing to the cameras.

Hon. Mr. Baker: Never.

Mr. Watson: Never. The thing is that you have got your 10 minutes at the end. If a guy is giving a speech and you heckle, the audience out there in television land doesn't know that.

Mr. Smith: In due course, I think it may have that effect. We are trying to adapt it ourselves. For example, when a government bill is under debate, it is the responsibility of the parliamentary secretary to the minister whose bill that is to co-ordinate the debate. They have to give me the list of their speakers and all that.

What we are trying to get them to do, and I am being quite candid here, is that they have to be on their toes, that if some opposition member speaking to a bill says really stupid things, he is questioned on that and forced to defend what he said. That is the theory and it is just starting to evolve.

Hon. Mr. Baker: We think it is working too.

Rev. Blaikie: We have only been doing this for three weeks.

Mr. Watson: In the system, what I am saying is that where the fellow who sort of has the outburst says--

Mr. Smith: I understand what you're saying.

Mr. Watson: --"you're absolutely wrong," under the old system, that was not recorded on the television. Is that right?

Mr. Smith: Not on TV, but it's in Hansard if the reporter picks it up.

Mr. Watson: Your expression was that he lies in wait; then that is going to be on television.

Mr. Smith: Oh, yes, certainly.

Mr. Watson: So the fellow who was genuinely interested in the subject and said something was wrong is more likely to lie in wait.

Mr. Smith: I think what has cut down interjections more than anything else is probably the no evening sittings, if you know I mean.

Mr. Breagh: We were discussing that phenomenon here last week.

Mr. Watson: Do you mean it has something to do with the hours--

Mr. Smith: It has something to do with dinner hour.

Mr. Chairman: John Lane, do you have some questions?

Mr. Lane: I certainly have enjoyed this dialogue this morning. I think it has been very useful. I think all three gentlemen have indicated the success of their committee in changing the rules has been that all parties worked together for the good of the working of Parliament and sort of forgot about

party politics. I would suspect that you shouldn't try to change your rules in election year. You wouldn't probably get that good guy situation. I wonder what is going to happen when it comes election year. You are trying it for a year. Will some of the fellows want to break rank and not follow the new system when they want to make some political issue.

Hon. Mr. Baker: I don't think we have diminished the opportunity to make political issues. I don't think we've done that at all. I really believe that we may very well have enhanced the opportunity to make political issues. We've perhaps given committees more power for members to scrutinize what the government is doing, if that is the bent of a particular committee.

With respect to the questioning after debates, nonsense can be found out in a better way than one could ever deal with it before, assuming members are on their toes. I don't think we've diminished the right for heated, prolonged debate in any significant way in the terms in which you talk about it in an election year. The House is still a lively, boisterous place when liveliness and boisterousness are relevant and called for. I truly believe that to be the case.

Mr. Smith: I think the ultimate fate of these changes will depend on how successful they are. If most members think they have been successful, the prospect of an upcoming election, I don't think, would upset that. I think they would be made final.

Mr. Lane: But would you suspect that you wouldn't have the same sort of support from all parties in your committee in changing the rules in an election year or would that sort of limit the call to achieve that?

Hon. Mr. Baker: I see. That's a different question.

Mr. Smith: It might have been tougher.

Hon. Mr. Baker: It might have been a little tougher to do it. We did it at mid-term.

Mr. Lane: I think that would be a good start.

Hon. Mr. Baker: We also did it, I have to say, in an atmosphere after the bell-ringing episode that had focused such attention on parliament and the breakdown of parliament, for whatever reason and however viewers would look at it, that we as an opposition party who had participated in the bell-ringing thing felt the time had come on the first allotted day afterwards to call as a motion a call for parliamentary reform. That was taken up in other places. In other words, it didn't just grow in the air. It grew because there was a perceived necessity to do something about the place.

Rev. Blaikie: I think that will continue. Even though we're getting closer to another election, as this committee reports, hopefully, subsequent reports won't suffer the same fate as our fourth report on the speakership and they will have more

attention paid to them in that motions of concurrence might be moved and that sort of thing. I think the same political pressure to not be seen as the party that doesn't want to proceed with parliamentary reform will be there, regardless of how close we are getting to another election. In fact, the closeness of an election might make people more eager not to be seen to be putting a stop to this momentum for parliamentary reform. I hope that would be the case.

Mr. Smith: We should draw to your attention, too, that we've built in a provision in the rules, even though it's temporary, that will automatically ensure that the rules are reviewed by each parliament. What we did was we put in a provision that says that in the second semester of the first session of each parliament. In other words, after you've had your first three months, in the second semester the government must automatically call a one-day debate on procedural reform. At the end of that one-day debate, a reference to the standing committee on procedure and organization automatically goes, which sets them up with a reference to come back with recommendations on further reform. That is something that is in there now which would ensure that under each parliament you would have a reference to a committee to reform the rules.

12 noon

Mr. Lane: That sounds like an excellent situation. I think it was Bill that made the statement about attracting and keeping people. I think what you're saying is that you hope these new rules will do just that, they'll attract good people and keep them longer. Around here sometimes one wonders if you're really sane or not because you're here. I don't think that's a particularly good feeling, that you should be someplace else to be more useful. You are saying you hope this rewriting of the rules is going to attract and keep good people in Parliament, which I think we need if we're going to have good government.

Rev. Blaikie: Yes. I see that as one of the goals of the reform.

Mr. Lane: The one thing that is different in provincial politics than it is in federal politics is that it's pretty near a no-no for members like myself from a long way out of town to move my family to town. My constituents feel that I've moved out of the riding and so they'll elect somebody that lives there. I think that's not quite the same at the federal level. For one reason or another, the feeling is a little different and many members do that.

I hate sitting till 10:30, but what about the frustrations of not being able to get back to my riding and here we are, through at 6:30 and nothing to do except get in trouble or whatever?

Hon. Mr. Baker: That is a problem. I think that's one of the question marks that we have with respect to the rules, the changes themselves. The anticipation of the committee was that

that would happen, but we would be creating more time for creative committee work, time that would not be challenged by the necessity of being in the House. We'll have to see how that works out.

Mr. Chairman: On that point, have you been scheduling committee meetings during the evening?

Hon. Mr. Baker: In terms of this experiment, which we've been at for three weeks, the answer is no, because committees have not even started yet.

Mr. Smith: I had one. I had my special one.

Hon. Mr. Baker: That's a special committee.

Mr. Smith: That will happen.

Hon. Mr. Baker: Bill and I are on a subcommittee of this committee dealing with certain specific items to keep the momentum of reform going, to deal with it very quickly. We have two reports ready for the steering committee next week now, as a result of sitting at night. I think it could become popular to sit at night, especially if committee work itself is seen as a pretty rewarding kind of life. I think that sitting in a chamber listening to a debate in which you're not interested at all from your constituency point of view or your background, training or any connection is an easy thing to trade away for something that could be interesting in a committee where some work can really be done.

Mr. Chairman: When the House is sitting in the evening, it at least gets the members in the building. That would be, I would think, some concern, particularly for those members that live a fair distance from Ottawa. Their families are home and they are alone in Ottawa. What do they do with their time? I realize they have their office and their constituency mail and things of that nature. Probably their own secretary has gone home and they use a tape recorder. It's a matter of utilizing their time.

Mr. Breaugh: Some use towels, I am told.

Mr. Chairman: Yes.

Rev. Blaikie: On that question, if the abolition of evening sittings leads to widespread aimlessness in the evenings--

Mr. Chairman: Wenching.

Rev. Blaikie: No. The idea of getting rid of the evening sittings, as I always understood it, was to create time for committee work. One of the problems is, and you must have it here, you fly in witnesses from Vancouver, put them in front of a committee and then the bells ring, and we have such a prolonged way of voting. You fly the people in and then they sit there and wonder what's going on. They listen to some bells for 45 minutes--

Mr. Smith: Two hours sometimes.

Rev. Blaikie: --or two ours or whatever, and by that time their allotted time for appearing before a committee has disappeared and they've got to come back from Vancouver again some other time. It was ridiculous. The idea was to create some time on a daily basis where committees could meet without fear of wondering what was going on in the House or whether there was going to be a vote and whether the witnesses were actually going to get to be questioned.

Maybe I'm just a workaholic. If the evenings aren't filled with creative committee work and also with the opportunity for members to maybe do things, like read a book, or maybe get to some of those more lengthy reports you cannot work your way through if you are thinking about whether you should go down to the House or whatever.

The idea is to have some sort of focused time for that kind of thing and also to have some committee work which is not interruptable by House work. Those evenings are not filled every evening, but if the evenings are not filled with that kind of work, then I think the experiment will have been a failure.

Mr. Rotenberg: The comment I would have from our experience, in the mornings when the House is not sitting, and there are not too many committee meetings, that is when you are in your office, when civil servants are available do research to handle the constituency problems--

Mr. Smith: We have committee meetings in the mornings.

Mr. Rotenberg: Yes, you have some; but if you are tied into the House in the morning and you are free in the evening, in the evening your secretary is not there, the civil servants, the people who are going to handle the complaints aren't there. The morning time can be better filled with other than House work, whereas in the evening you have nothing much else to do. Would you comment on that?

Rev. Blaikie: It is hard to comment on that, because we are going to see--that is the idea, to have an experiment, not writing it in stone.

Mr. Smith: We have more members in Ottawa who have their families in Ottawa than you do here in Toronto.

Mr. Rotenberg: You find the members are losing office time because you are sitting in the morning.

Mr. Smith: They probably will a bit; but there will be some committee meetings in the evening. Have us down here in six months and ask us that question, and we can answer it more intelligently.

Mr. Chairman: Are there any other questions?

Mr. Smith: Or come up and see us.

Mr. Watson: One of the things that I guess you have tried to do is eliminate some of this surprise element of having a vote. You outlined the Friday one.

One of the things that bothers me is using, for instance, the bells for purposes other than those for which they were intended. The purpose is to call the members. If the members are all there, why not vote? It is used as a delaying tactic.

One of the ways that you mentioned in passing here a while ago was the matter of pairing. Is that official, unofficial? Is it used?

Mr. Smith: It does not have the official sanction it once had. There was an incident on December 13, 1979, which had something to do with it. Then there have been one or two unfortunate incidents since then.

There was a group in Europe whose members thought they were paired, and three guys stole out of the hotel in the middle of the night and caught a flight back. I will not mention what party they belonged to, but it was the official opposition.

In any event, however, what it really means is that our whip will literally not accept a pair unless it is in writing. I think, if a member puts it in writing, you can count on it; but apart from that, he just will not accept one.

If Walter gave me a pair, I would stake my life on it, but there are some people about whom, quite frankly, I do not have that same feeling.

Hon. Mr. Baker: At the moment, I think you would have to say that the atmosphere in the House of Commons is not the best. That is a fact, for a host of reasons which we could discuss from now until the cows come home. The place works poorly when the atmosphere is not reasonably good. It is not productive for members, it is not productive for the public, it is not productive for the government. We have that atmosphere in this House of Commons at the moment.

Rev. Blaikie: We are doing not badly on parliamentary reform, in spite of that.

Hon. Mr. Baker: That is right.

Mr. Smith: It is picking up. It is not as bad as it was during the constitutional debate.

Rev. Blaikie: It couldn't have been much worse.

Hon. Mr. Baker: I have a feeling that maybe these rule changes have dealt with a thing that is very human, and that is the mental and physical fatigue of members who sit at hours that are unusual, given any other occupation.

There were reasons for the development of those hours years ago. We are trying to see whether or not that can make a difference now that circumstances have changed. I sense not nearly as much of a short-tempered feeling among members as I did, say, three or four months ago. That could be from a host of reasons. I like to think that some of it is a happy--

Mr. Smith: It fouled up during the Constitution debate.

Hon. Mr. Baker: I think so; and it has started to get a little better now.

Mr. Chairman: What about television, gentlemen? What is your reaction to the changes that have allowed for more television coverage? Do you think it's good? Do you think it has its problems? Do you think it should be expanded?

12:10 p.m.

Hon. Mr. Baker: I might lead off with it. I frankly think it was as inevitable as Mr. Hansard was hundreds of years ago. I don't think it's open to us now to argue, although some will, that perhaps we should remove television from the House of Commons. Some do.

I think it's been helpful in some respects in having people understand what goes on, but that has also created its own distortions, because people do not understand booing and noise and pounding and shouting and this kind of thing. They don't understand it, but at least it goes on and people now see it.

It's no longer a private club with a maximum of 500 visitors in the gallery. It has potentially five million visitors looking at it.

My general view is that it has been a good thing for Parliament, generally. I would like to see it at some time expanded to committees. That is a difficult thing from the point of view of cost and accommodation.

The constitutional committee proved to us that it was possible to have what would be called a reasonable electronic Hansard in committees. It's possible to have it. I believe that there was a much greater understanding of the issues, not only because of the delay in the constitutional debate, but because of the debate that took place in the committee.

I noticed that as a member my mail became more perceptive of the issues that existed between and among the parties in the constitutional matter. People were becoming conditioned to what the issues were as a result of televising committees. I am hopeful that at some stage we will see it expanded to committees.

I have a debate in my own mind as to whether it should be done on an electronic Hansard basis or whether it should be done on some other basis, allowing the media to come in and do what it wants to. I would not be worried too much with an experiment on either group.

There is no point in televising the restaurant committee, the library committee and a number of those things, but there may be in televising the economic and taxation committee in a period of high unemployment. There might be a number of reasons why some specific committee should have the right and have the facilities for television.

Rev. Blaikie: The House could decide to do that now--

Hon. Mr. Baker: They could do it.

Rev. Blaikie: --at any time if they thought the deliberations of any one committee were important enough.

Hon. Mr. Baker: Something that is not dead among many of us is the idea of expanding it.

Mr. Smith: We did expand it during the Constitution. I think it's a good thing because it allows the public to see what is going on.

The way in which it's done in the House of Commons by having small cameras tucked underneath the balcony, all controlled by remote control by somebody some distance away in a control room, it's done unobtrusively in a nondisruptive way. I understand your lights go on and off out here, depending on whether or not they want it. You have cameramen up there; you can literally see them. That, to me, quite frankly, would be very obtrusive and disruptive.

Mr. Watson: You can't see when the lights go on, either.

Mr. Smith: In the Commons, you're not even aware that it's going on. You know that it's going on, but you don't notice it. You don't see anyone. You don't even really see the cameras. Once you make the commitment to do it that way, you lose the down sides.

The problem with the committees is that if they were going to do it equally you would have to have two or three committee rooms where committees which were dealing with matters of great public interest could meet. I would not want cameramen walking into committee rooms and disrupting the proceedings and turning on lights.

Hon. Mr. Baker: On balance, I would agree with my friend.

Rev. Blaikie: I would just like to get in on that for a second. First of all I would like to say that your committee rooms are a whole lot nicer than ours, and this is something we will have to take back.

Mr. Smith: We do have the railway committee room.

Hon. Mr. Baker: It looks like an empty swimming pool.

Rev. Blaikie: This is really nice.

On the question of televising, I wouldn't like to see the committees televised unless some of our reforms go through and work out. Otherwise it would be televising meaninglessness.

Mr. Smith: Or grandstanding. That's what we wanted to avoid.

Rev. Blaikie: On the question of televising, I would not like to see the committees televised unless some of our reforms go through and work out. Otherwise, it would be televising meaninglessness.

Mr. Smith: Or grandstanding. That is what we want to avoid.

Rev. Blaikie: One of the reasons the constitutional committee was so interesting and vital was that there was change. It was an issue in which parties were divided and issues were new. It was actually a live event, unlike most committee meetings I have been at. In terms of televising, one of the things we have got to do, and obviously we are going to continue to do so, is to do more to help people understand what is going on.

You can become very cynical. People are cynical enough about Parliament, politicians and the process, and for good reason. There is no sense in making them cynical for bad reasons, simply because of the way Parliament comes across on TV. They do not have at their disposal interpretive literature to explain what is going on. Often the heckling and what not sounds great when you are there in the chamber, but on TV, it just sounds like noise. That is part of the problem. I am not sure how you get over that. You do not want them to televise the whole House so that they would see what a member sees and hears in the way in which a member sees and hears it because then they would see all the empty seats. You would have to explain the empty seats. People are in committees. People are here. People are there.

That is not being done. It is being done by individual members of Parliament, but it has not been done in a comprehensive way. Maybe the House of Commons needs to do more work itself to explain itself to the Canadian public.

Mr. Chairman: Maybe you should stick to radio.

Mr. Smith: That is what they have in Britain. It is not as effective.

Mr. Chairman: Thank you very much. We appreciate your coming all the way from Ottawa. We have learned something. Members of our committee will be going to Ottawa in March and, hopefully, meeting with your respective caucuses and your committee, of course, after we have had a chance to digest what we learned today. Thanks very much.

Hon. Mr. Baker: Thank you very much for having us, Mr. Chairman.

The committee adjourned at 12:17 p.m.

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